City Council Introduction: **Monday**, June 20, 2005
Public Hearing: **Monday**, June 27, 2005, at **5:30** p.m.

Bill No. 05R-134

FACTSHEET

TITLE: **COMPREHENSIVE PLAN AMENDMENT NO. 05014,** by the Director of Planning, at the request of Mark Hunzeker on behalf of Eiger Corporation, to amend the 2025 Lincoln/Lancaster County Comprehensive Plan, by deleting references to the Theater Policy and entertainment in the Downtown, and by deleting one statement requiring market studies for proposed new theaters outside of the Downtown.

STAFF RECOMMENDATION: Denial.

ASSOCIATED REQUESTS: Change of Zone No. 05035 (05-85); Change of Zone No. 05036 (05-86); Letter of Appeal to Special Permit No. 05023 (05R-135); and Letter of Appeal to Use Permit No. 140B (05R-136).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 06/08/05
Administrative Action: 06/08/05

RECOMMENDATION: **Denial** (5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent).

1. This proposed Comprehensive Plan Amendment was heard before the Planning Commission in conjunction with an associated text amendment to Title 27 of the Lincoln Municipal Code (Change of Zone No. 05035) and Change of Zone No. 05036, Special Permit No. 05023 and Use Permit No. 140B to allow an 18-screen theater/entertainment complex at S. 91st Street & Pine Lake Road (Prairie Lake shopping center).

2. The applicant has proposed to amend the Comprehensive Plan to adopt a neutral position with respect to the location and number of movie theater screens. The specific amendments to the Comprehensive Plan being requested are set forth on p.21-22.

3. The staff recommendation to deny is based upon the *"Analysis"* as set forth on p.4-7, concluding that the Theater Policy, which has been in place for 21 years, has helped implement the Comprehensive Plan goal of maintaining the downtown as the heart of the community and the focus for community entertainment and other activity. The study completed by an outside independent theater consultant concludes that the Lincoln theater market is already over-served, and that allowing theater complexes over six screens outside downtown, even 6.5 miles away, would have a serious negative impact on the continued viability of existing downtown theaters. Reduced attendance at downtown theaters will have secondary effects on revenues at downtown eating and drinking establishments, and could lead to the closing of the downtown theater, which would be a serious blow to all the other efforts to revitalize the downtown. Neither the proposed comprehensive plan amendment or the associated zoning text change would further the goal of reinforcing downtown as the unique central place of the community, and in fact would have the opposite effect.

4. The Market Feasibility and Impact Study is found on p.26-64.

5. The applicant's testimony and other testimony in support is found on p.9-13 and 18, and the record consists of one written communication in support (p.69-70). The additional information submitted by the applicant in support of the proposal and referenced in the applicant's testimony is found on p.65-68.

6. Testimony in opposition is found on p.13-17, and the record consists of one letter from the Lincoln Haymarket Development Corporation in opposition (p.71).

7. Testimony by the Director of Planning and Keith Thompson, who conducted the Market Feasibility and Impact Study, is found on p.17-18.

8. On June 8, 2005, the majority of the Planning Commission agreed with the staff recommendation and voted 5-2 to recommend **denial** (Pearson and Krieser dissenting; Bills-Strand and Esseks absent). See Minutes, p.19-20.

9. On June 8, 2005, the Planning Commission also voted 5-2 to recommend denial of the associated text amendment to Title 27 of the Lincoln Municipal Code (Change of Zone No. 05035) and Change of Zone No. 05036 from AG Agricultural District to B-5 Planned Regional Business District, and took "final action" denying Special Permit No. 05023 and Use Permit No. 140B for authority to develop an 18-screen theater/entertainment complex at the Prairie Lake shopping center at S. 91st & Pine Lake Road.

FACTSHEET PREPARED BY: Jean L. Walker — **DATE**: June 14, 2005
REVIEWED BY:____________________________ — **DATE**: June 14, 2005
REFERENCE NUMBER: FS\CC\2005\CPA.05014

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for June 8, 2005 PLANNING COMMISSION MEETING

PROJECT #: ***Comprehensive Plan Amendment #05014***
Change of Zone #05035

Note: This is a combined staff report for related items. This report contains a single background and analysis section for both items.

PROPOSAL: ***1. Amend the Comprehensive Plan by deleting several statements that refer to the Theater Policy and entertainment in the downtown, and by deleting one statement requiring market studies for proposed new theaters outside the downtown.***

2. Amend Section 27.63.630(c) of the Zoning Ordinance for theaters in the B-5 district to allow theaters with more than six screens provided it is located outside a 6.5 mile radius measured from the center of the intersection of 13th and O Streets.

CONCLUSION: The Theater Policy, which has been in place for 21 years, has helped implement the Comprehensive Plan goal of maintaining the downtown as the heart of the community and the focus for community entertainment and other activity. The attached study completed by an outside independent theater consultant concludes that the Lincoln theater market is already over-served, and that allowing theater complexes over six screens outside downtown, even 6.5 miles away, would have a serious negative impact on the continued viability of existing downtown theaters. Reduced attendance at downtown theaters will have secondary effects on revenues at downtown eating and drinking establishments, and could lead to the closing of the downtown theater, which would be a serious blow to all the other efforts to revitalize the downtown. Neither the proposed comprehensive plan amendment or zoning text change would further the goal of reinforcing downtown as the unique central place of the community, and in fact would have the opposite effect.

RECOMMENDATION:

CPA#05014	**Denial**
CZ#05035	**Denial**

GENERAL INFORMATION:

ASSOCIATED APPLICATIONS:

CZ#05036 - A change of zone request from AG to B-5 for approximately 14.11 acres to expand Prairie Lakes regional shopping center.

SP#05023 - To allow an 80,000 square foot, 18-screen theater megaplex on approximately 24.52 acres near the intersection of South 91st Street and Pine Lake Road.

UP#140B - To amend the Appian Way use permit covering the Prairie Lakes regional shopping center to include an additional 14.11 acres and the theater megaplex.

HISTORY:

2004 - The Grand Theater with 14 screens opened downtown.

2002 -A six screen theater was approved for North 27th & Folkways Blvd. This theater has not been built to date.

2002 - The former three screen theater at Edgewood Shopping Center was expanded to six.

1996 - The three screen theater at Eastpark was expanded to six.

1996 - The special permit for theaters in the B-5 district was amended to raise the maximum number of screens in a theater complex from 3 to 6 (it was accompanied by a request from Southpointe Pavilions for a 6-screen megaplex, which has since been constructed).

1994 - The current reference to Theater Policy was included in Comprehensive Plan.

1992 - The Zoning Ordinance was amended to make theaters in the B-5 a use approved by special permit rather than "by right", and subject to conditions that the B-5 District must have 400,000 square feet of other floor area with at least 3/4 occupied, and that the District may have no more than one theater complex per district with no more than 3 screens in the complex.

1984 - The Zoning Ordinance was amended to remove indoor movie theaters from all districts except B-4 (downtown) and B-5, and required a market study in B-5 to assess the impact of new theaters.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page V2 - Vision - Downtown Lincoln belongs to all residents of Nebraska because "downtown" is synonymous with the University of Nebraska, State government, and the State Capitol building. This state-wide ownership has strong economic implications, and for that reason, as well as the desire to maintain downtown as the "heartbeat" of the community, the Comprehensive Plan will ensure that downtown remains a special place. The plan will seek to preserve vistas and institutions of cultural importance, to reinforce the district as a center of entertainment, and to promote a rich diversity of activities and uses, including housing, education, government, offices and commerce.

Page F16 - Community Form - Downtown Lincoln continues to serve its role as the central location for commerce, government, entertainment, and the arts. Views to the State Capitol have been preserved, as they have in the past, as part of our community form.

Page F44 - A key element to this role has been the longstanding and successful "theater policy." This policy has allowed downtown to retain an appreciable share of the area's movie theaters. It is intended that this policy would continue as part of the present Plan."

Page F44 - Market impact studies will still be required for movie theaters.

Page F48 - The City should preserve and enhance Downtown's role as

- the major office and service employment center of the City
- the focus of all levels of government
- the City's principal cultural and entertainment center
- the hotel and convention center for the City
- the City's financial center
- a hub of higher education
- specialty retail geared toward employees, area residents, convention visitors and University population

- Lincoln's successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown.

ANALYSIS:

1. The Theater Policy is referenced in the Comprehensive Plan and embodied in the Zoning Ordinance. According to the key provisions in today's ordinance, theaters outside the downtown area are allowed only on land designated B-5 (Planned Regional Business District), and only through approval of a Special Permit and Use Permit. A key condition for approving a Special Permit is that only one theater with no more than 6 movie screens is permitted in any one B-5 district. The areas zoned B-5 to accommodate regional-type businesses include: North 27th Street corridor north of Cornhusker, Westfield Mall, Southpointe Pavilions, and the Edgewood and Prairie Lake shopping centers (see map included with this report). The Theater Policy has encouraged the continued concentration of theater screens in the downtown area, with smaller theater complexes constructed or approved in outlying areas. The policy also has encouraged private investment in the Grand, a new 14-screen complex on the downtown block bounded by O and P Streets and 12th and 13th Streets to replace a similar number of screens in outmoded facilities.

2. Theaters are an important part of an overall entertainment package offered in the downtown area that makes the area more vibrant and attractive for other uses: office and services, retail, residential, and hotels. Today's downtown contains nearly 20 percent of the city's jobs and its hotel rooms, and contributes a tax base valued at nearly $300 million. Recent studies sponsored by the Lincoln Chamber of Commerce have underlined the importance to our tourism and convention business of having a concentration of event facilities, hotel rooms, restaurants, retail and entertainment all within walking distance of each other. Downtown Lincoln is proposed in the Comprehensive Plan to continue as "the heart" of the community. Communities act like organisms, and successful communities must have healthy hearts. Much of Lincoln's past and continuing success is attributable to the vibrant, active mix of uses and the special history and character of its downtown. The theater policy has been important in maintaining that activity downtown, along with the City's continuing efforts to reverse slum and blighting conditions through public investment and redevelopment agreements. The redevelopment agreement resulting in construction of the Grand 14 has kept Lincoln theater screens lit in an era where few if any theater screens remain in the downtowns of our peer cities.

3. Regarding the Comprehensive Plan, the proposed amendment would <u>delete</u> the following language, as the applicant states: "...to adopt a neutral position with respect to the location and number of movie theater screens." Specific passages proposed for deletion fall under "Future Conditions – Business and Commerce" in the Plan:

A key element to this role has been the longstanding and successful “theater policy.” This policy has allowed downtown to retain an appreciable share of the area’s movie theaters. It is intended that this policy would continue as part of the present Plan” (page F-44).

Market impact studies will still be required for movie theaters (page F-44).

Lincoln’s successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown (page F-48).

The applicant also requested that the Planning Department identify any other passages in the Comprehensive Plan which might be in conflict with their objective. Staff believes that the current policy has played a critical role in reinforcing the number of theater screens downtown, and theaters are a major component of entertainment. Therefore the references to entertainment in the passages below probably should be stricken as well, if the goal is to reflect the applicant’s desire for a “neutral” policy with regard to theaters:

In the Vision Statement at the beginning of the Plan: “The plan will seek to preserve vistas and institutions of cultural importance, to reinforce the district as a center of entertainment, and to promote a rich diversity of activities and uses, including housing, education, government, offices and commerce” (page V2 under “Vision”).

Downtown Lincoln continues to serve its role as the central location for commerce, government, entertainment, and the arts. Views to the State Capitol have been preserved, as they have in the past, as part of our community form (page F16 under “Community Form”).

4. The proposed amendment to the zoning ordinance involves a change to one of the conditions required to obtain approval for a Special Permit for theaters in the B-5 District. The current language states that *“Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than 6 movie screens.”* The applicant is requesting to add the following language to that sentence: *“...however, if the proposed theater complex is located outside a 6.5 mile radius from the center of the intersection of 13th and “O” Streets, it may have more than 6 screens.”*

5. This proposed amendment only modifies the current Theater Policy, as opposed to deleting it entirely. Yet the applicant is asking to delete all references to the current Theater Policy in the Comprehensive Plan. This seems to be a conflict in intent, which staff has noted to the applicant.

   Also, the applicant has asked to delete reference to performing market studies for proposed new theaters in the Comprehensive Plan. But he did not ask to amend the corresponding provision in the zoning code, under the provisions for use permits in the B-5 District, that require any change in zone or use permit that is in conflict with the Comprehensive Plan to be accompanied by an environmental impact statement and market study, or the corresponding provisions in the Design Standards that detail the information expected in an environmental impact statement.

6. The Comprehensive Plan forms the key basis for all of the regulations in the zoning and other development codes. The references to the Theater Policy in the Comprehensive Plan provide the legislative underpinning for the Special Permit requirements in the zoning code. Removing those references is likely to invalidate either the existing version of the Theater Policy or the applicant's proposed modified version.

7. The practical effect of restricting B5 districts to 6 screens unless they are more than 6.5 miles from downtown is depicted on the map included in this report. All of the current B5 districts would continue to be restricted as they are presently, except for the one district placed on the Prairie Lake development at Highway 2 and 84th Street, which is the subject of the associated Special Permit and Use Permit for an 18-screen theater. No other areas in the city or its future growth area, inside or outside the circle defined by the 6.5 mile radius from downtown, are designated in the Comprehensive Plan for regional commercial uses.

8. Based on the very limited information supplied with the application plus informal discussions with the applicant, the claims seems to be that:

   - The current policy has resulted in inadequate facilities that are underutilized by the population.

   - Because of this underutilization, a new megaplex outside downtown would draw new patronage and not have a significant effect on existing patronage at the downtown theaters – especially if it is more than 6.5 miles from those facilities.

   - A megaplex such as the 18-screen theater being proposed in the accompanying applications is the only model being constructed by the movie industry today, and is required to ensure favorable treatment on obtaining new films under the movie industry's film distribution policy.

9. In order to better understand the dynamics of the theater marketplace in Lincoln, City staff contracted with an individual with national experience in developing and operating theaters, as well as providing consulting services. The applicant could have been required to submit an environmental impact study and market study under the provisions for Use Permits in the B-5 District. But we informed the applicant several months ago that the Planning Director would waive this requirement and contract ourselves for this study to be done. The consultant has submitted the attached report on the dynamics of the theater market in Lincoln, national trends affecting the market, and the effects of constructing a new megaplex outside the downtown area. He will be present at the Planning Commission hearing on this item to make a presentation and answer questions.

10. The consultant, in his report and in informal discussions, directly refutes the applicant's claims, concluding that:

    - Lincoln has <u>more</u> screens for its existing population than the national average.

    - Local patronage at these screens is <u>higher</u> than the national average.

    - Based on existing demographics, a new theater would need to pull in customers from existing theaters, and it would not be profitable.

- The location of the proposed megaplex at Highway 2 and 84th Street suffers from two problems: an unfavorable location at the southeast edge of the existing and future urbanized area, and the proximity of the existing Edgewood 6, with which it would have to share new films under the movie industry's film distribution policy.

- The construction of a new megaplex would have a serious negative impact on the continued viability of the existing downtown theaters. Even at 6.5 miles from downtown, the market area for a megaplex would substantially overlap with the market area for downtown screens. The consultant estimates a 35 percent reduction in patronage and revenues at downtown theaters if the megaplex is constructed. Also noted is the fact that miniplexes as well as megaplexes are still being developed and operated profitably in other theater markets.

- The reduction in patronage and revenues at the downtown theaters could result in a City liability under the terms of the redevelopment agreement. The agreement requires that if the assessed value of the Grand 14 property is reduced below a certain level, due for example to a loss in revenues caused by changes to the theater requirements in the B-5 zoning districts and the valuation of the Grand 14 is reduced due to loss of revenues and is not sufficient to cover the payments on the TIF bonds, then the City would be responsible for covering the payments to cover the TIF bonds, the City will be responsible for paying the difference in taxes owed to the Tax Increment fund.

- A reduction in patronage at the downtown theaters will have secondary effects on patronage and revenues at downtown eating and drinking establishments, and a prolonged loss that darkens the downtown screens would be a serious blow to all the City's other efforts to revitalize the downtown, reducing its attractiveness for other investments and potentially affecting the assessed values of other downtown properties.

- The Theater Policy has been adjusted in the past, and it should be reexamined from time to time to consider adjustments that would account for changes in demographics and other factors. However, the consultant report demonstrates that no change to the policy is necessary or wise at this time.

Prepared by:

Marvin Krout
Director of Planning
May 18, 2005

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COMPREHENSIVE PLAN AMENDMENT NO. 05014,
CHANGE OF ZONE NO. 05035,
CHANGE OF ZONE NO. 05036,
SPECIAL PERMIT NO. 05023,
and
USE PERMIT NO. 140B

PUBLIC HEARING BEFORE PLANNING COMMISSION: June 8, 2005

Members present: Larson, Taylor, Pearson, Sunderman, Carroll, Krieser and Carlson; Bills-Strand and Esseks absent.

Staff recommendation: Denial of all five applications.

Ex Parte Communications: Carroll, Taylor, Larson, Pearson and Sunderman disclosed that they had conversations with Mark Hunzeker; Larson also had a conversation with Don Wesely. There was no additional information to be disclosed as a result of these contacts.

Brian Will submitted one letter in support and one letter in opposition.

Proponents

1. Mark Hunzeker presented the applications and gave a brief history on the Lincoln theater policy. At the time that the theater policy was adopted, there were only two theaters outside the downtown, both of which were single screen and both of which are now defunct. The result of that policy is that all theaters in Lincoln that run first run commercial movies are owned and operated by a single company. The initial policy allowed three theaters in the B-5 districts; Edgewood had proposed six screens; the City Council at that time cut that to three and the only operator willing to build and operate three screens was one of the incumbent downtown operators. Edgewood is now owned by the current operator, Douglas Theater Company. When SouthPointe was developed, an outside operator proposed twelve screens. The city insisted that there only be six screens and threatened to hold up or deny the shopping center if they were going to insist on twelve screens. Again, the only company willing to build six screens was the incumbent operator, Douglas Theater Co. At that point, when six screens became the norm, Edgewood and East Park were expanded from three to six screens. Hunzeker submitted that currently, no exhibitors, including the Douglas Theater Company, build six screen complexes anywhere except Lincoln. Virtually all of them are sixteen screens or greater, including the three different complexes built by Douglas Theater Company in Omaha.

Hunzeker then discussed the proposal to amend the Comprehensive Plan to delete references to the theater policy to make it neutral as to the number of screens in shopping centers; to amend the zoning ordinance to allow for more than six screens in the B-5 districts if located more than 6.5 miles outside the radius of 13^{th} & O Streets; to rezone additional land to B-5 at the Prairie Lake shopping center in accordance with the Comprehensive Plan; a use permit and special permit to develop an 18-screen theater complex along with other uses at Prairie Lake.

Hunzeker explained that the reason for this request is that the developer of this site desires to have a state-of-the-art theater complex and entertainment center at Prairie Lake shopping center. This developer has been very meticulous about reviewing the architecture, materials and landscaping that go into that center. Likewise, with an entertainment complex, they are interested in having first-rate architecture, premium grade materials, expanded food offerings and first quality, state-of-the-art theater venues. The developer wants to be able to negotiate for a first class facility with more than one theater operator. In order to do that, there is a need for more screens to attract any interest whatsoever in the project from operators other than Douglas Theater.

Hunzeker then addressed the staff report and theater study done by the city. Hunzeker submitted that the study commissioned by the city staff was designed from the outset to justify the existing policy and to justify denial of these applications. The study starts on a fallacious assumption that there are 43 theater screens in Lincoln. That number includes the Star Ship 9 and the media arts center of the University, neither of which exhibit first run commercial movies. So, instead of one screen per 6,082 people, the number is really more like one screen for 873 people, which is almost exactly on the US average that is so frequently report in the staff report.

Hunzeker also suggested that it is interesting to note that even the report acknowledges that 70% of the current box office revenues are generated at East Park, Edgewood and SouthPointe. Thus, the current downtown theater policy is not creating a dominate theater market in the downtown.

Hunzeker then distributed information on other markets closer to Lincoln than the national average that he has investigated, including Des Moines; Omaha; Madison, Wisconsin; Wichita, Kansas; and Lincoln. Des Moines has one movie screen for every 5541 people within a 20 mile radius; Omaha has one per 6279; Madison, Wisconsin, has one per 7390; Wichita has one per 7068; and if you include a 20-mile radius population, the screen ratio in Lincoln is one per 8795. We are not over-screened in Lincoln. Therefore, the basic premise of the city's study is false. Moreover, none of the other cities that he reviewed had only one theater operator.

Hunzeker noted that the study concludes that the proposed theater complex will lose money and "finding a theater chain willing to move forward on the site will prove challenging, if not impossible". It is Hunzeker's opinion that that conclusion is reached using a highly inflated cost of construction of the new site (20 million dollars) versus the budgeted 13.5 million that was used for the Grand Theater complex downtown, including site acquisition, demolition, site prep and streetscape improvements. The city has subsidized the Grand Theater to the tune of 3.4 million dollars. In addition to that, it entered into an agreement which says, in part,

> ...that so long as any of the bonds issued with respect to the project area remain outstanding and unpaid, the city agrees a) to use its best efforts to maintain and duly enforce the current B-5 zoning restrictions that prohibit theater complexes of seven or more screens, and b) that if the city takes any affirmative action resulting in a theater complex of seven or more screens actually opening for business within the City of Lincoln, the city agrees that the valuation of the redeveloper improvements are subject to reduction for the actual loss of rental income and the city acknowledges that the valuation of the redeveloper improvements upon completion assumes the theater policy is in place and will remain so until the final maturity date. ...

In addition, the city has provided free parking to the Grand. Hunzeker does not believe it is a bad thing to subsidize projects in the downtown area to keep it vital, but we have spent millions doing that and if the tax revenues to support the city services have to come from somewhere, and all of the tax revenue from new projects in the downtown are sequestered to pay off TIF bonds downtown, then there has to be some private projects permitted to go forward to put taxes into the city coffers as opposed to pay off TIF bonds.

Hunzeker further pointed out that the staff recommendation of denial is based upon protection of the Grand. Lincoln's ordinances don't protect any other land use in this manner – banks, hotels, office buildings, retail shops, restaurants – every other kind of use you find downtown that is permissible anywhere else in the city is not restricted in the same manner as theaters. The City is directly involved in the enterprise of operating a theater complex in downtown in the form of the Grand.

It is Hunzeker's opinion that the ordinance, in its current form, does not advance any of the purposes of zoning set forth in the state enabling legislation, a copy of which was submitted for the record. Those permissible purposes of zoning are to,

> ...be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan. ....

This area is clearly specifically designated in the Comprehensive Plan for a shopping center. Virtually every shopping center in the country is developing theater screens as a complementary use. Nothing has been said about this project which in any way implies that it is detrimental to any property surrounding it. Extensive traffic studies and expensive road improvements have been made in anticipation of development of a major shopping center at this location. All the applicant wants is the opportunity to build a use which is commonly included in shopping centers everywhere else in the country. Lincoln may very well be the only city in the country with a policy as restrictive and anti-competitive. Hunzeker urged that it is time to allow for some competition in this market.
Hunzeker then referred to the conditions of approval on Special Permit No. 05023 and requested that Condition #2.1.1.1 be deleted, which calls for a revised land use table that deletes the 20% pass-by reductions for both the office uses on Lots 4 and 5, Block 2; Lots 10 and 11, Block 3; and for the theaters. There is a very specific annexation agreement which calls for the manner in which trip caps are to be computed. The calculations have been done in accordance with that agreement and the developer does not agree to make any change in the way that agreement reads today.

Hunzeker also requested that Condition #2.1.1.6 be deleted, which refers to a 12-inch high pressure gas line across the site. This gas line does not exist. The nearest gas line is 1500 feet away at about 95th Street and there is one on the west side of 84th Street, but it does not go through this site.

Pearson asked for an explanation of the "pass-by reductions". Hunzeker gave a brief explanation and stated that this was thoroughly negotiated at the time of the first use permit and annexation, and the calculations have been done in accordance with that annexation agreement.

Carroll noted that the economics of the existing theaters (East Park, Edgewood and SouthPointe) do not show a substantial increase saying that there is a need for more theaters in the City of Lincoln. How do you address that we need an 18-plex theater? Hunzeker pointed out that we do not go through the retail sales data every time someone wants to put in a new retail use at this shopping center; we do not do that when someone wants to put up a new office building; nobody talks about the number of restaurants or how many people are eating at restaurants; nobody talks about the same thing for banks or hotel rooms. Hunzeker believes that it is inappropriate for a decision of this kind to be made based upon whether or not the Planning Commission or the Planning Department think we need additional theaters. This community is growing and over the next ten years we are probably going to add population here equivalent to a medium size city. Based on the other cities we have looked at, this community cannot only support it but wants it. Having been to SouthPointe and to Edgewood in the winter time, those places are crowded. We need more theaters where people can get to them without have to drive 10 miles to get there.

Carroll believes that the documentation provided by Hunzeker states that the other cities are showing that Lincoln is not under-served or over-served, yet the economics show us that we are not in a large need of more theaters per capita. On one hand you say we need more theaters because we should be the same as other cities, but the economics tell us that we're right on pace and we're growing but we're not in need of more theaters. Again, Hunzeker does not think that is the question you have to ask to make a decision. We have a site clearly designated and approved as a major shopping center site. There will be two million square feet of retail and service uses in this immediate vicinity as this property develops. Every shopping center of that magnitude that you can find anywhere in the country has theaters associated with it. It is a common use. This proposal is in a growing portion of our community and it seems that the land use issue, which is whether there should be theaters at this site, is one which is obvious–there should be, and all the developer is requesting is an opportunity to negotiate with more than one operator for the construction of those theaters.

Carroll pondered whether it would be better to have a scaled increase in theaters as population increases instead of asking for eighteen today. Hunzeker's response was, "according to what?" Nobody builds 6-screen complexes except in Lincoln. And the only operator who builds six screens in Lincoln is the operator that owns all of the screens. There is not a single place you can find where people are building six-screen theaters. The Douglas Theaters in Omaha are 16, 18 and 20 screens, and it is because they are competing with other operators that are doing the same. It is impossible to get another operator interested if all you can offer them is six screens. Hunzeker agreed that phasing might be a possibility, but no one is going to start with less than twelve screens.

2. Larry Douglas testified in support. Lincoln will continue to experience its greatest growth and infrastructure improvements in its southeast quadrant. Such catalysts as the defacto south interstate of Highway 2, recent annexation of Cheney, residential developments in Bennet, plans for construction of a new high voltage corridor for Nebraska City and a pre-south beltway verify this trend. If you want to strengthen downtown Lincoln and increase the spending resident population, don't inhibit suburbia for the sake of the Downtown Lincoln Association political maneuvers. Forcing an antiquated, hypocritic ordinance on Eiger Corporation and the growing community of citizens that the Prairie Lake shopping center serves can be seen only as a protection for the Douglas Theater monopoly and a socialist pro-downtown prohibition to free competition and market forces. It is competition we need to discuss, not cannibalization.

3. Jerry Soucie, who reside south of SouthPointe, testified in support. He totally disagrees with the feasibility study. It is "stuff" like this that gives Lincoln such a bad reputation for economic development. This study is to protect the Douglas Theater Corporation. It costs $8.00 to go to a movie. The increase in revenues is from increased prices. The impact of this study is not to help the taxpayers and citizens of Lincoln – it is to protect Douglas Theater. Why do you care? Why do you care what happens to the Edgewood Theater? If someone comes in with an economic development plan that improves the viewing options and causes a less efficient business to go under, so what? That is the nature of capitalism in America today. Soucie believes that the Commission needs to recognize that by having a monopoly we are not getting the movies that people get in other towns. Why can't I have the option of going to an 18-plex at Hwy 2 and 84^{th} Street? It is about time that this city stops thinking it can protect certain businesses at the expense of others. We need to have competition. Perhaps if there was competition we wouldn't be paying $8.00. He believes that we need to be generating more competition with Douglas Theater rather than less. Here you have a private developer willing to pay 15 million dollars for construction that goes into this city. If the developer can't make a go with the 18-plex, so be it.

4. Ted Glaser testified in support. He believes there is a need for a paradigm shift of the economic development attitude within this city. Glaser owns several apartment buildings in the Near South neighborhood and no one talks about cannibalizing his apartment buildings when others come to build new apartment complexes. When John Q. Hammons talks about building a hotel, we don't talk about cannibalizing existing hotels. Why is it that we suddenly have a protected monopoly saying we can't let anyone else but Douglas operate downtown? We're too afraid to grow. Nebraska City residents go to Bellevue to go to a movie. Here is your chance to compete with Omaha. The original plan calls for no more than six screens within 6.5 miles. The proposed location is 7.5 miles. There is a need to revisit our attitude towards economic growth within this city. Highway 2 is an opportunity to use a pipeline to bring economic activity to counter the "sucking sound" going down Interstate 80 towards Omaha.

<u>Opposition</u>

1. Carol Brown, 2201 Elba Circle, testified he opposition. North Lincoln has waited so very long for a movie theater. She is opposed because she is fearful of the impact of this proposed megaplex on the opportunity for a theater in North Lincoln.

2. George Crandall, Crandall-Arambula, Portland, Oregon, a consulting firm which specializes in revitalizing cities, testified in opposition. Theaters are a fundamental building block in bringing back downtowns. When his firm visited Lincoln, they found that Lincoln has already taken the first step in revitalization. Crandall-Arambula has been retained by the city to prepare a Downtown Master Plan; to prepare an implementation strategy for that master plan; and to prepare the design guidelines that will allow implementation to proceed. Many cities are looking for theaters in the downtown because they attract people into the downtown and attract the after-hours restaurants and shops. In Racine, Wisconsin, they do not have a cinema downtown and they are looking for one. Knoxville, Tennessee, is trying to attract a major cinema into the downtown. They know that without the cinema they cannot revitalize their retail. Oak Park, Illinois, is trying to expand a downtown cinema so that they can attract more people into the downtown. In developing the proposed revitalization strategy for Lincoln, Crandall-Arambula built it around the new cinema which is located in the right place on P Street in what he would call an anchor location at the end of the retail string. It is situated right; the front door is on the right street; and it has the potential to be a major factor in revitalizing retail over a period of time. The attendance in that theater is not what it should be. We like to see about one million plus visitors a year and he understands that Lincoln is around 600,000. There is a lot of potential that has not yet been realized. Lincoln will not realize the potential unless you see the full potential in that cinema. The timing is wrong to introduce competition into the area which will suck investment out of the downtown. You don't want to be like every other place in the country with theaters in every shopping center. This is all about economic development and the Commission needs to vote "no" on changing the policy.

Pearson noted that during a briefing on the Downtown Master Plan, she asked whether one portion of the entertainment project could sustain a downtown, and Mr. Crandall had said no – that there have to be many facets to support the downtown. She suggested that to say that the downtown relies on one theater would be stretching it a bit. She does not see that the Grand is the center of the downtown. Knowing Nebraska winters, do we really expect people to drive over seven miles to come to downtown to go to a movie in the winter? Crandall stated that a theater is a fundamental piece. They need to be healthy and they need to thrive if the downtown retail is to come back, and part of Crandall-Arambula's strategy is a downtown retail revitalization strategy which attaches itself to the cinema. Without the cinema, the downtown retail revitalization will not stand a chance. It is fundamental and Lincoln is way ahead of the curve by making a substantial investment in that facility. You do not want to put that in jeopardy. The timing is just wrong. You are starting to create momentum in bringing the downtown back. There are other theaters in the region. People do have other options. You need to take care of the heart first. The heart of your community is the downtown. If your heart is weak, the extremities will be weak. You are starting the recovery process and the cinema is your first step. "Do not drive a stake through the heart before you get rolling. The timing is wrong. Do not let the policy go." Lincoln is unique because of this policy and you don't want to be like every other place. Every other place is trying to be like Lincoln.

3. Russ Bayer, 633 S. 112th Street, testified in opposition. He serves on the Downtown Lincoln Association board, but they did not ask him to represent them. He also serves on the LIBA board and they did not ask him to appear. These are thoughts for himself and his family. He owns property in downtown Lincoln in the Haymarket and outside the Haymarket area, but he also owns property in northwest, northeast and southeast Lincoln, and 60 acres 6.7 miles from 13th and O Street.

With that said, Bayer believes that the Downtown is the most important. We want the downtown to be the center for entertainment. It has taken courage of the citizens to invest their time, effort, talents and money in the downtown. It has taken courage of the elected and appointed officials who have recognized the importance of a downtown so that our community can grow in all directions and still have the downtown remain viable. It has taken the dedication of associations like DLA, Updowntowners and Downtown Lincoln Neighborhood Association, along with strong partnerships of UNL and local and state government. All of that has made the downtown what it is today. Bayer suggested that downtown is really in its infancy as far as its new role in our community. The balance that exists today appears to be a good balance. It is fragile. We are losing the wrestling tournament to Omaha. We need to protect that area if we believe so heartily in what it should be in the future. We have to convince people that there is parking. We have to convince the community that there is a lot to do downtown. If there is any deviation in the vision or in the policy, it would be very devastating to what we have going on in Lincoln.

Another issue is "trust". We have a theater company that has lived and worked under a policy that is in place. What business person in town would not support a policy that strengthened your business? Other businesses can create theaters in this community under that policy. Recently, Douglas Theater put money into Downtown Lincoln, and they did so trusting in a 20-year policy. What message does it send if we now change the policy? The message we want to send is that we can trust Lincoln.

Bayer also suggested that this is a self-serving policy – there is one potential B-5 that could have this megaplex. If you are going to change the policy, then get rid of it completely and make it available to everyone.

Bayer suggested that six theater screens in an "urban village" is the right answer. Be courageous and support our existing policy and send the message of trust.

5. Cecil Steward, 125 N. 11th Street, testified in opposition. He and his wife have been major downtown supporters and advocates for at least eleven years. The Comprehensive Plan is the first document in Lincoln that calls for "urban villages". An urban village is where there is mixed used, where people can walk, bike, recreate, be entertained and they can do their shopping in a village-like atmosphere. The heart of Lincoln has had many of those components for many years and the heart of Lincoln is Lincoln's urban village. This policy was created to help protect that characteristic. If we were promoting other urban villages instead of regional shopping centers, this topic would not be before the Commission because the six screens would adequately serve outlying urban villages.
Steward suggested that the point that has been made about no other use getting this kind of protection is incorrect. The Comprehensive Plan and zoning ordinance is all about protecting other uses. While there may not be the same kind of financial attachment to the other uses, the principle is and has been with us. It may be a violation of the health, safety and welfare uses of zoning. This is a welfare issue. It is the welfare of the community. Theaters in shopping centers are vital to the shopping center just as theaters in the downtown are vital to its well being and economic development, but we are looking at 50-year plans. The Downtown Master Plan is based upon a 50-year set of principles and we need to be creative about what those principles may be in the future. Theaters in shopping centers are auto oriented only. The choices that people will have of living, working and recreating in an urban village are very different and auto dependency is going to continue. Now is not the time. It is reasonable to expect that a regulatory principle like the theater policy should be investigated and there will be a day when it should be changed, but now is not the time. Steward implored the Commission to stick with what we have until the downtown can become more of an urban village.

6. Mary Jane Steward, 125 N. 11th, appeared on behalf of the Downtown Neighborhood Association, in support of maintaining the entertainment district in the downtown area. Allowing megaplexes outside will not encourage entertainment growth in the downtown area. The Downtown Neighborhood Association believes this proposal will discourage the viability of downtown living and entertainment. Even if she lived in the suburbs, she would still support the Comprehensive Plan.
7. Ryan Osentowski testified in opposition on behalf of the National Federation of The Blind of Nebraska, Lincoln Chapter, with two main concerns about the proposal involving accessibility. The proposed theater location is not accessible by public transportation, bus or otherwise. The area being proposed has no bus routes. It is a common misconception that the blind and visually impaired are not interested in participating in movies, but in order to participate you have to get there. Downtown is very accessible. The blind have been enjoying movies for years and years and will continue to do so, and Douglas Theaters has helped by adding a new dimension called Mopix – a system by which the blind and the deaf can view a movie using close caption and descriptive video service. One of the theaters in the Grand is equipped with a Mopix. The Grand is in an accessible, safe walking environment. He is not sure that is the case in the proposed area.

8. Travis Green, 4445 Hillside Street, chef/owner of The Dish restaurant located at 11th and O Streets, testified in opposition. He respects and supports businesses investing in our city, but the Grand Theater has had a very positive impact on his restaurant. His sales have been up since the theater opened in November. Ultimately, as a citizen of Lincoln, he believes that it is important to have a strong downtown with government, hotels and a major entertainment district. As a community, we need to have the integrity to preserve our downtown. His investment was made with the knowledge of the theater policy, and he believes other business people downtown have made similar decisions.

9. Maurice Baker, 3259 Starr Street, testified on behalf of the Clinton Neighborhood Organization in opposition. If the Grand no longer existed, the closest first run movie house would be East Park, which is not particularly accessible by public transit. A change in this policy would be inconsistent with the Antelope Valley project, which was undertaken to maintain the viability of the downtown area. It is possible that if we lose even one of these entertainment sites, the attractiveness of living downtown becomes less attractive in the future. There are secondary impacts as we make investments. There are also secondary impacts as we make disinvestments. If Hwy 2 takes place at the cost of existing investments, there will be secondary impacts on other businesses. The Planning Commission needs to consider the well-being of the city as a whole and not necessarily one particular area.

10. Polly McMullen testified in opposition on behalf of the **Downtown Lincoln Association,** which has been the leadership and advocacy organization for downtown since 1967. Downtown is a center for employment, tourism, government, education, residential living and entertainment. Designation of downtown as Lincoln's destination entertainment district has been a centerpiece of city planning, investment and public policy since the late 70's. As downtown has gotten stronger in recent years, some in our community may believe that it is "fixed" and that it is time to abandon some of the policies and commitments. But the reality is that downtown is not "fixed". Downtown is still fragile and it is just beginning to stabilize after a long difficult period. Great cities generally share one common denominator – a vibrant and successful downtown. The theater policy, along with the location of business and finance, local, federal and state government and the University, is a key building block to our past success and our continued progress. She urged the Commission to continue the long tradition of support for this key entertainment building block.

11. Don Wesely testified on behalf of The Douglas Theater Company. Wesely suggested that the theater policy has evolved over time into a neighborhood theater policy. By limiting to six screens, the result has been theaters easily accessible in different neighborhoods. This won't continue to happen if you break apart the policy. The 18-plex will hurt the downtown as well as all of the other theaters. Mayor Seng has taken a strong position, as well as the Planning Department, the DLA, and the Lincoln Journal Star, in support of the current theater policy. The city worked very hard to get a downtown theater. A national developer was brought in to look at the project and it was found that the chains are not interested in being downtown. Our locally owned Douglas Theater stepped up and made the investment of 11 million dollars. Part of the agreement included a recognition that the theater policy was a central piece of the decision that made this possible. This is absolutely the wrong time to make a change in the policy. We need to honor the investment and commitment that has been made.

Wesely believes that Douglas Theater has been a good corporate citizen in this city. They have complied with the policy; it has lead to neighborhood theaters throughout the city and we need to maintain the policy.

Sunderman inquired why the national theaters were not interested in being downtown. Wesely stated that the number of screens was not an issue. It was just that they don't feel downtown theaters have been successful – they are a high risk. Even with the policy, the national theaters believed it to be too great of a risk to come in and make the investment. The city leaders came to the conclusion that the only way to get a downtown theater was to maintain the policy and work with our local company, Douglas Theaters.

12. Deb Johnson, Executive Director of Updowntowners and resident at 84th and Hwy 2, testified in opposition. The existing policy has worked to strengthen downtown and the community of Lincoln as a whole. The Updowntowners strive to improve the quality of the downtown through events that enlighten our community around the clock. Entertainment is a key component of a vital downtown. Downtown is everybody's neighborhood. A change in the theater policy will harm the entertainment focus for downtown. The existing policy has been successful in helping downtown in its transformation to a mixed use center.

13. Marvin Krout, Director of Planning, indicated that the city's consultant from Knoxville, Tennessee, would like to comment on some of the of the testimony. Krout also stated that he is proud to live in Lincoln because it has been fortunate enough to live with economic development and retain its values. It is wrong to pick one over the other. He wanted to comment about the testimony suggesting some kind of "movement of wind" from Lincoln to Omaha. This needs to be considered more carefully. When you compare employment growth in the last five years, Lincoln-Lancaster County (being 40% the size of Douglas and Sarpy County) has created just about as many new jobs as Douglas and Sarpy County. He does not hear that "sucking sound." The Planning Department is pro-development. What makes this community unique is that it lives on its values and not just on economic development, and downtown is one of those values.

Krout suggested that there are new theater complexes being built with less than 12 screens. There are limiting factors that make the site at 84th and Hwy 2 a less than ideal site for the location of any size number of screens.

14. Keith Thompson, Knoxville, Tennessee, stated that he has fed his children for the past 15 years by participating in the motion picture exhibition industry. Until recently, he was the head of real estate for what became the largest movie chain in the world. He then started a consulting business which lead to his ownership of a movie chain which he has sold and is now head of real estate for a large movie chain; he continues his consulting business, which specifically looks at theater uses in shopping centers and mixed use developments nation-wide. He first came to Lincoln about three years ago to research putting the Grand downtown. If you look at the status of the movie theaters in Lincoln today versus three years ago, the six screen theaters that exist are nice, well-maintained movie theaters. You do not have a monopoly, but a theater chain. Now you have a beautiful facility downtown as a result of the theater policy.

Thompson was asked to assess the proposed site. His assessment has nothing to do with the theater policy. The overriding factor to justify building new movie theaters is rooftops. There is no one that lives southeast of the site. 4,000 people will not even support one movie screen. The next criteria is whether there are other movie theaters nearby. In this case, there is Edgewood Six. They won't be able to show the same films that are being shown at Edgewood. Regardless of the policy, there are no rooftops to the southeast so the market has to come from where there are other theaters. You cannot build a megaplex in a competitive film zone and expect it to be economically successful. The economic viability has nothing to do with the theater policy.

Thompson also suggested that when you build any theater in the market, you transfer business. When the Grand opened, it transferred business from Edgewood, East Park, and SouthPointe. If the policy is changed, Thompson predicts that there will soon be a plan amendment for SouthPointe to expand. It is a better location than the Prairie Lake site. It takes over a million dollars per screen today. This market is not big enough to sustain a top line revenue base in an 18-screen theater at this location to make it economically justifiable.

Pearson previously heard that the city relies on the health of the core; the core is relying on the health of the Grand theater; no one wanted to invest except for Douglas Theater; yet Thompson is saying that he would not recommend that someone build a theater downtown. If we only had one theater company willing to build in downtown, why are we resting the health of our downtown on a theater that probably is not going to sustain the downtown? Thompson explained that he was summarizing in general that movie theater chains do not look to make investments in downtown.
Carlson asked the consultant to speak to the theory that opening this competing facility will drop the attendance downtown. Thompson clarified that he has no relationship to the Douglas Theater chain. When he first looked at Lincoln's market four or five years ago, he thought it was a vital market without any megaplexes. He came to the conclusion that, while it is a strange policy, it is a policy that works. There are a lot of developers all across the United States that have this "irrational exuberance" when it comes to movie theaters. The real sad fact is that back in the late 1990's, the development community grasped this concept and an incredible number of theaters were built, and 15 movie theater chains went bankrupt in the process by overbuilding and over-expanding. Irregardless of the theater policy, there are about 6,012 movie theaters in the US today. Of those, only 523 are megaplexes, about 9%. 2,337 of those 6,012 theaters are theaters that range from two to seven screens. It is false that there are no six-plexes being built. The reason most large chains are not pursuing six screens is because they are pursuing development opportunity in larger markets. It has more to do with the size of the market you are trying to serve.

Response by The Applicant

As far as now not being the time to change the policy, Hunzeker pointed out that this policy has been in place for 21 years. The two theaters that were outside the downtown at the time the policy was instituted are gone. All of the screens in Lincoln have been consolidated under one ownership. It took 20 of those 21 years for us to get a megaplex downtown. Everybody understands that this policy is running against the market. There is no standard suggested by anybody as to the market place standard by which we can measure the "right time." The right time is when someone is willing to put their "real" money of their own on the line in a location to build something outside the downtown. Mr. Thompson may be right – maybe he has correctly analyzed this site, but there ought to be a level playing field for a developer of a shopping center in this community to be able to negotiate with more than one player. If his client is guilty of "irrational exuberance", that is his problem, not the Commission's. He is not going to waste money if he doesn't think it is feasible. All this developer is requesting is an opportunity to do business in Lincoln in a way that enables this developer to be able to survey the market and to invite proposals from more than one operator.

Hunzeker believes it is a great location. It has the potential to be a great shopping center. It would be in much closer proximity to much more population as time goes on as we develop the Stevens Creek Watershed and other parts of southeast Lincoln that are about to get additional sewer through the Beal Slough sewer system. Hunzeker believes that now is the time.

Pearson wondered whether there would be potential to limit this to a 12-screen theater. Hunzeker believes it is possible that someone might be willing to phase it in, but it would not be likely that they would phase it in starting with less than 12.

Taylor moved denial, seconded by Larson.

Taylor believes the basic concern is the viability of our downtown community. He believes that Douglas Theater has done a very good job in making a commitment to our city. You don't want to back out of an agreement. It is important to do everything possible to continue along with the process and progress that we have done so far. He wants to stay the course and not change in the middle of the stream.

Larson commented that he has been around downtown for many years and he observed the negotiations that went on on that block to build a megaplex. We were unsuccessful in attracting any national developer or national chain. He acknowledged that Douglas was subsidized, but there was a high element of risk on the part of Douglas to invest that kind of money and it was done out of the sense of community improvement as much as it was potential profit. He believes we should stick to the agreement.

Pearson stated that she lives very close and works very close to downtown and goes to movies downtown. But, she does not think that you can rest the security of the downtown on one theater. That is false hope. You have to rest it on the Grand, the Lied, the Haymarket, the bars, the restaurants, etc. It can't rest on one thing. She believes it is an overstatement to say that the Grand will fail, and it is an overstatement to say downtown will fail if the Grand fails. Does she want to see a megaplex on 90th and Hwy 2 today? No. So she is trying to think of a reasonable compromise and she thinks a 12-plex outside the 6.5 mile radius is a reasonable compromise that she would propose.

Carroll commented that there are other cities trying to do what Lincoln is doing downtown and he does not think we need to stop now. The core is very important. It needs to grow and expand and get better for everybody. Putting a megaplex on the fringes just does not help. It is important to stay with your core. We need to protect that.

Carlson commented that he is encouraged that people will come out and get engaged in a discussion like this and encouraged that the proponents and champions for downtown will show up. With due respect to Pearson, he does not hear people saying the downtown will fail if the Grand fails. We're talking in terms of dynamic. The current policy is guiding us in the right direction. We need to stay on the path that is taking us in the positive direction. There are multiple opportunities downtown. It is a tool in the tool box. We have heard a lot of talk about a lot of different concepts. The question is, what is going to take precedence here? People talk about investment. Investment is good. Competition is good. Economic development is important. One of our duties is to protect what's valuable in the community. Carlson also takes seriously his duty as a Planning Commissioner and it is his job to protect what the community says is valuable. And the Comprehensive Plan indicates that downtown is what is important to this community. It is the heart of our community. We own downtown. We own the investments. Making this change threatens that future; it threatens downtown; it harms downtown; and threatens the downtown neighborhoods. It is our job to protect what is valuable. In this situation, it is the downtown and a policy that encourages and strengthens downtown.

Motion to deny carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. <u>This is a recommendation to the City Council and Lancaster County Board.</u>

<u>CHANGE OF ZONE NO. 05035</u>
<u>ACTION BY PLANNING COMMISSION</u>: June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. <u>This is a recommendation to the City Council.</u>

<u>CHANGE OF ZONE NO. 05036</u>
<u>ACTION BY PLANNING COMMISSION</u>: June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. <u>This is a recommendation to the City Council.</u>

<u>SPECIAL PERMIT NO. 05023</u>
<u>ACTION BY PLANNING COMMISSION</u>: June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. <u>This is final action, unless appealed to the City Council within 14 days.</u>

<u>USE PERMIT NO. 140B</u>
<u>ACTION BY PLANNING COMMISSION</u>: June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2.

Taylor stated that he is definitely not opposed to competition. He thinks it is extremely important, but he believes the way we started this ball rolling with the commitment that was made by Douglas Theater was a decision that was very well made at that time and he believes it makes good sense to stay on the same course until it comes to conclusion. He does not want to do anything to jeopardize the viability of our downtown area at this time.

Motion to deny carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. <u>This is final action, unless appealed to the City Council within 14 days.</u>

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Gary L. Aksamit
of Counsel

April 27, 2005

VIA HAND DELIVERY
Marvin Krout
Director of Planning Department
City of Lincoln
555 S. 10th Street
Lincoln, NE 68508

Re: Comprehensive Plan Amendment

Dear Mr. Krout:

On behalf of Eiger Corp., the owner and developer of the regional shopping center at 84th and Highway 2, we request a comprehensive plan amendment to modify the City's existing policy regarding the location of movie theaters. As you know, the existing zoning ordinance is extremely restrictive as it relates to movie theaters, except in the B-4 Downtown Business District. As you and I have discussed in the past, no other business permitted in a regional shopping center district is regulated in the manner theaters are regulated. For example, the zoning ordinance does not limit the number of restaurants, book stores, jewelry stores, banks, or even "places of public assembly, entertainment, or recreation, except theaters." The distribution and exhibition of motion pictures has changed considerably in the years since Lincoln's zoning ordinance was amended to include the current restrictions to no more than six theater screens per B-5 district. We think that the result has been that Lincoln's market is underserved by motion picture exhibitors. We think that a modern entertainment complex, including multiple theater screens, would be welcomed by the people of Lincoln, and would enhance the mix of uses available at the shopping center.

Therefore, we propose that the comprehensive plan be amended to adopt a neutral position with respect to the location and number of movie theater screens. Specifically, we would propose that on page F-44, near the top of the page, the following sentences be deleted:

- "A key element to this role has been the longstanding and successful 'theater policy.' This policy has allowed downtown to retain an appreciable share of the area's movie theaters. It is intended that this policy would continue as part of the present Plan."

We would also propose that the following parenthetical sentence near the end of the section entitled "Location Criteria"on the same page be deleted:

- "(Market impact studies will still be required for movie theaters.)"

We also propose the following sentences be deleted on page F-48 under the heading "Principles for Downtown":

- Lincoln's successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown."

Finally, we would ask that any other language which you may feel has a bearing on this issue be appropriately modified to adopt a neutral position on the location of theaters in Lincoln.

We have presented this idea to the Downtown Lincoln Association Board of Directors. As far as we know, the Board has not taken a position on the issue yet.

As I have discussed with you previously, also enclosed is a proposed amendment to the text of the zoning ordinance to implement these changes, together with a Change of Zone, Use Permit, and Special Permit for the location of an 18-screen theater and entertainment complex in the shopping center. Please give me a call if you wish to discuss this matter further.

Thank you for your consideration of this matter.

Sincerely,

Mark A. Hunzeker
For the Firm

MAH:la
cc: Greg Sutton
Kelvin Korver

(G:\WPData\MH\Eiger 727.002- Theaters\Eiger - Krout 4-26-5.ltr.wpd)

27.63.630 Permitted Special Use: Theaters.

Theaters may be allowed in the B-5 District by special permit under the following conditions:

(a) A use permit for 400,000 square feet or more of commercial floor area has been issued;

(b) A Certificate of Occupancy has been issued for 300,000 square feet or more of commercial floor area; provided, however, that the City Council may decrease or waive this requirement upon a finding that the proposed theaters will have no significant adverse impact upon the property values and existing uses in the B-4 Lincoln Center Business District, with particular emphasis upon the effect of such proposed theaters on the entertainment and cultural uses in the B-4 Lincoln Center Business District; and

(c) Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than six movie screens**; however, if the proposed theater complex is located outside a 6.5-mile radius from the center of the intersection of 13th and "O" Streets, it may have more than six screens.**

(G:\WPData\MH\Eiger 727.002- Theaters\Zoning Ord 27-63-630 amdmt.wpd)

Theater Proposal

1. Application:

   a. Comp Plan Amendment to delete references to the current "theater policy" as a centerpiece of the City's effort to maintain a strong downtown.

   b. Zoning text amendment to allow more than six-screen theater complexes in B-t Districts if the special permit area is more than 6.5 miles from 13th & O

   c. Change of zone to B-5, Use Permit and Special Permit requesting approval fo an 18-screen theater complex near 91st Street and Pine Lake Road

2. Explanation:

Our reasons for proposing the changes are twofold: First, we want to have a first quality entertainment complex at Prairie Lake Shopping Center. In addition to theaters, we expect other entertainment type tenants and restaurants. We think Lincoln deserves this kind of facility and that Lincoln citizens will support it.

Second, we want to have the ability to negotiate with more than one theater operator. We have very high expectations that this will be a state of the art complex – not just in terms of projectors and sound equipment, but also in terms of architecture, premium grade construction materials, expanded food offerings and ancillary entertainment. In short – a step up even from the Grand. IN order to be able to negotiate for that kind of facility, we need to be able to "shop" it to more than one operator.

Our client, Eiger Corp., is the developer of the Prairie Lakes Shopping Center at 84th and Highway 2. One of the owners was also the developer of South Point.

While developing South Pointe, an attempt was made to include a larger theater complex, because theater developers said they were not interested in building only three screens (the maximum allowed at that time). Other issues made compromise necessary, resulting in a change in the zoning ordinance to allow up to six screens by special permit.

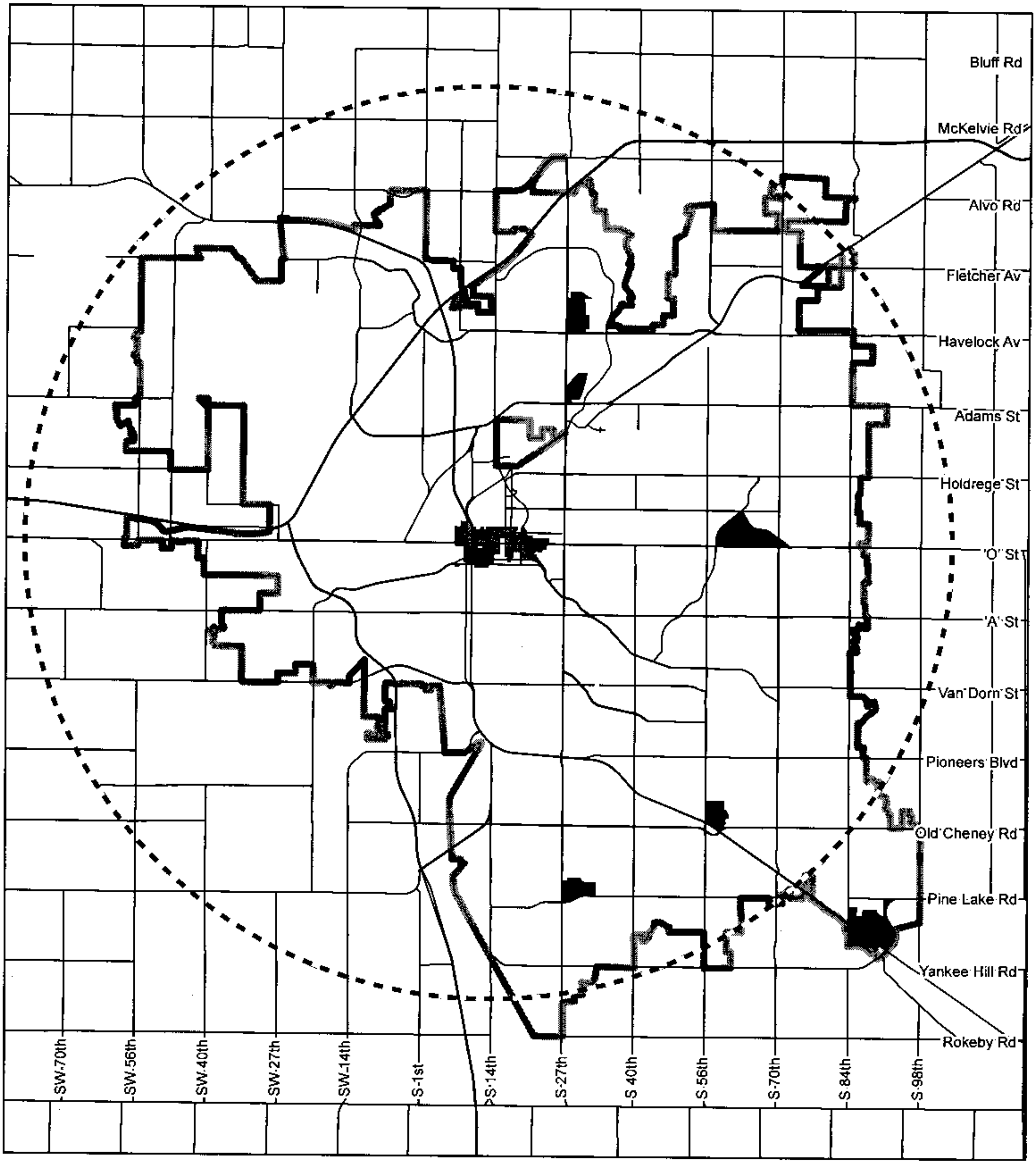
The outside theater developers walked away, leaving Douglas Theater Co. as the only company willing to build a six-screen theater. Douglas has since expanded its three-screen facilities at Edgewood and Eastpark to six screens as well.

The City's restriction on the number of screens allowed outside the downtown area has resulted in <u>all</u> screens in Lincoln being owned by a single company – Douglas Theater Co. That is not to say Douglas Theater Co. is a bad company – in many ways it has been a victim of the City's restrictive policy as well as a beneficiary. If you asked Douglas Theater Co., they would likely say that they would like to have built more screens at South Pointe, or Edgewood, but could not.

The problem with the City's policy is that films are distributed in a way that gives preference to companies operating a certain number of screens within a certain geographic area. A new company coming to Lincoln would never be in a position to get the best movies, because with only six screens, it would never gain the market position to get first choice.

Current City policy virtually prohibits entry into the Lincoln market by new theater operators. <u>No other business</u> is restricted in this way. No other use enjoys such insulation from new competition.

Having said all that, we are not hostile to Douglas Theater . . If they make the best proposal for Prairie lake, they will be the operator. We have no qualms about that. However, we want to have the ability to build enough screens to attract competitive proposals. We think that is only fair.



Land Affected by Proposed Amendment to Theater Policy

Comprehensive Plan Amendment 05014

6.5 Mile Radius From 13th & O

B-4 Zoning District

B-5 Zoning District

Lincoln City Limits

NORTH

0 0.5 1 2 Miles

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May 11, 2005

Market Feasibility and Impact Study of Proposed Mega Plex Theatre in Lincoln, Nebraska

R-T Associates

May 2005

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2. 2004 Census Update and Existing Theater Statistics
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4. 2006 Census Update w/ Growth Applied and Projected Theater Statistics
5. Summary Attendance, Financial Model Prairie Lake 18, Pro-Forma Summary Operating Results
6. Capital Costs 18 Screens
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9. Theatre Map
10. Map - Lincoln, NE - 10 Mile Ring, 15 Minute Trade Area
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A. Introduction

The following Market Feasibility Study will attempt to determine the sustainability, and practicality of a potential 18 screen "Mega-Plex" movie theatre being proposed as a possible use at a shopping center site located at 84th Street and Highway 2 near the southeastern boundary of Lincoln, NE. In addition, this assessment will focus on the impact that the proposed location (known as the "Prairie Lake Theatre") will have upon the overall Lincoln, NE theatre market, with a specific emphasis upon the potential affect of this site upon the only mega-plex currently operating in Lincoln, The Grand 14, a recently opened stadium mega-plex located at 1101 P Street in Downtown.

The proposed "Mega-Plex" theatre is being considered as a potential land use in an application for Comprehensive Plan Amendment that is requesting, among other things, an amendment to the City of Lincoln's theatre policy which prohibits the construction of theatres greater than 6 screens outside of the central business district in downtown Lincoln. The Prairie Lake Theatre site is currently partially developed, and is occupied by a super Wal-Mart, a Menard's super center, and several fast food and casual dining restaurants.

This feasibility study is being performed by R. Keith Thompson of R-T Associates at the request, and sole use of The City of Lincoln Nebraska.

The following report, relevant statistics, pro-forma financial results, maps, and demographic information is for the City of Lincoln's use, and is not intended to be relied upon by third parties. The estimates and projections contained within this study are based upon our work on other national theatre projects, results from theatres built within this and similar markets, our good faith estimates, and our past and current experience within the industry. We have taken into account current trends in the movie theatre industry, as well as national trends in shopping center development and land use in forming our opinions relating to this market feasibility study.

B. Executive Summary of Findings

There are currently six (6) locations and 43 movie screens currently serving the Lincoln, NE market.

- Annual movie theatre admissions in Lincoln are approximately 1,461,000 in total, and approximately 1,238,000 for first run full price admission theatres.
- The market trade area of Lincoln, NE (estimated at 261,545 people) is over screened by approximately 35% based on comparative data on the U.S. as a whole.
- The proposed Prairie Lake site at 84th Street and Highway 2 is likely too near to the Edgewood 6 to constitute a "free film zone."
- 79% of the forecasted attendance for the proposed Prairie Lake 18 comes from the transfer of business from the existing theatres in the market.
- Operation of an 18 screen theatre at the proposed Prairie Lake site will cause an annual drop in attendance at the existing first run theatres within the Lincoln market of approximately 345,000, equivalent to 28% of current total first run theatre attendance.
- The forecasted stabilized attendance decline at The Grand 14, after opening of the proposed Prairie Lake theatre is 409,000, a 25% deterioration from the current level.
- Extremely sparse population to the Southeast of the proposed site causes excessive overlap with the trade areas of the existing theatres in the market, including the Grand 14.
- The population living within a ten minute drive time of the proposed Prairie Lake site, forecasted at 87,349 in 2006, does not currently warrant the construction of a Mega-Plex theatre. In 2006 the total population forecast to be living within a fifteen minute drive southeast of the proposed site is only 4,575.
- There is not a sound financial model to justify the construction of the proposed Prairie Lake Mega-Plex theatre. Finding a theatre chain willing to move forward on the site will prove challenging, if not impossible.

C. Discussion of Existing Movie Theatres

With a census estimated 2004 population base of approximately 261,545 people living within Lancaster County, NE, which comprises an 840 square mile trade area, the market of Lincoln, NE has thirty two (32) first run screens, 9 second run or discount screens, and 2 specialty art screens for a total of 43 movie screens currently serving the market. (Please note that the demographics shown later in the report of an area within a 10 mile radius of Lincoln, and within a 15 minute drive time from the center of town show populations lower than the 261,545 Lancaster County census estimate because the figure reflects a smaller geographic area.)

Existing Base of Movie Theatres Serving Lincoln

Location	**2003 Box Office Revenues**	**2004 Box Office Revenues**	**Projected Annual Box Office Revenues(1)**	*Per Screen*
East Park 6	$1,675,191	$1,713,519	$1,154,000	*$192,333*
Edgewood 6	$1,275,768	$1,677,445	$1,341,000	*$223,500*
Southpointe 6	$2,055,714	$2,088,612	$1,811,000	*$301,833*
The Grand 14	Opened 11/19/04	$ 670,016	$3,384,000	*$241,714*
Starship 9 ($)	$ 461,970	$ 447,443	$ 455,000	*$ 50,523*
Media Arts Center 2				
Cinema Twin(Est.)	$ 212,534	$ 223,973	Closed due to The Grand 14	
Douglas 3	$ 475,847	$ 491,185	Closed	"
Plaza 4	$ 592,633	$ 469,910	Closed	"
Lincoln 3	$ 352,640	$ -0-	Closed	"
Total Screens 43	$7,102,297	$7,782,103	$8,135,000	

(1) Normalized annual box office projections taking into account the opening of the Grand 14 in November of 2004.

The Lincoln, NE populace of 261,545 is served by 43 total operating movie screens, which equates to a ratio of **population to screen count of 6,082:1.** According to the Motion Picture Association's 2004 Market Statistics, the U.S. as a whole in 2004 contained **one screen for every 8,207** people, indicating that Lincoln has approximately 35% more screens per person than the U.S. as a whole. The movie theatre industry's longstanding "rule of thumb" for the amount of population that it takes to economically support a movie screen has dropped in recent years from 10,000:1, to a range of between 8,000 to 9,000 people per screen. This drop in the number of people required to support a movie screen has been fueled primarily by a 40% increase in movie screens since 1994, as compared to attendance growth of only 19% over the same period.

An additional 6 screens have been approved in north Lincoln at the intersection of Folkways Boulevard, and N 27th, near the Lincoln Crossing regional shopping center. Construction of this approved theatre location will raise the screen count in the Lincoln market to 49 screens.

The estimated average attendance per person in the Lincoln trade area of 5.59 visits per year in 2004, vs. the U.S. average of 5.23 visits per person in 2004 (source: MPA Worldwide Market Research, 2004 MPA Market Statistics) supports the conclusion that the market is approximately 35% over screened.

D. Discussion of Film Zones

Theatre attendance is affected by a myriad of different variables, but probably the most misunderstood, yet most important factor is "film zones." A film zone is simply a geographic area determined by both the various film distribution companies and theatre operator's (exhibition companies), where movie theatres located within the "zone" or geographical area (because of their physical proximity to one another, and the costs of distributing film prints), are not allowed to license and exhibit the same films. All theatres in the United States are entitled to license film product, but those located within the same film zone, do not license or exhibit the same films simultaneously.

The proposed Prairie Lake location, at 2.5 air miles and 2.7 driving miles from the Edgewood 6, is too close by historical distribution practices for the two locations to exhibit the same films at the same time (or in industry terms, to "play day and date"). Typical geographic separation between theatre locations has been 4-5 miles in order for theatres to play "day and date." In this case, unless the Edgewood 6 closes, a theatre developed upon the proposed site at 84th Street and Hwy. 2 would "share the film zone" with the Edgewood 6, and split film product with this existing 6 screen movie theatre. In other words, if the proposed new theatre site were open this summer, only one of the movie theatres would be allocated a print of May 19, 2005's blockbuster release, "Star Wars - Episode III - Revenge of the Sith." Likewise only one of these two theatres would receive a "print" of "Madagascar," "Batman," etc.

Film allocation between competitive theatres is not simply a mathematical equation based on screen count. While screen count does play a role, in practice both the number of films and the quality of films from each separate distributor is also a factor. "A" titles (those expected to produce big box office grosses) are more evenly allocated between locations or exhibitors than a pure mathematical allocation would indicate, as film distributors do not want to be accused of "favoring" one location over another. The overall history and relationship between the exhibitor and the film company(s) also plays a role in film allocation. At its best, film allocation is quite subjective, taking into account many factors, including overall market penetration of the exhibitor, as well as the booking savvy and ability of the particular exhibitor to predict a film's success, and to ultimately position itself in the film rotation to receive the most lucrative film allocations.

The economic success of modern, stadium style mega-plex movie theatres, especially in smaller trade areas, is very dependent upon achieving a "free film zone." Film allocation among theatres located within a film zone directly affects the economic health and viability of those theatres, as particular films will be allocated to one or the other of the locations, but not to each of them. This phenomenon negatively affects the revenue streams of the theatres located within the same film zone, many times rendering one or more of the locations operating in a competitive film zone economically unviable.

E. Trade Area (Population) Overlap

Due to the location of the proposed Prairie Lake theatre (the southeastern most boundary of the City of Lincoln's residential and commercial development), the trade area for potential movie theatre patrons attending Prairie Lake significantly overlaps with the trade areas of the existing theatres serving the market. In 2006, based on U.S. Census information, the total population living within a 7 mile radius of the proposed location is projected to be 157,242. Of that demographic population estimate, only 3,646 people, or a mere 2.3% of the total live within the 7 mile "half" radius southeast of 84th Street and Hwy. 2 (please see map and demographic report attached hereto).

Hence virtually all of the patrons, and most of the attendance will come at the economic expense of the existing Lincoln theatre base. Those theatres closest to the proposed site will experience the biggest declines, with the deterioration lessening slightly as the distance between theatre locations increase. The Edgewood 6 will suffer the worst percentage drop since it will likely be forced to share film product with the Prairie Lake location.

The proposed site of the Prairie Lake 18 is located 7.4 air miles southeast of The Grand 14. Due to the sparse population southeast of the proposed Prairie Lake site, however, there is significant and excessive trade area population overlap between these two mega-plex locations. Within a ten minute drive of each location there is an "overlapped demographic" consisting of 72,410 people. Patrons within that overlap trade area will have a decision to make if they want to attend a film at a new modern mega-plex: "Do we go downtown to the Grand, or do we stay in the suburbs and go to the Prairie Lake 18?" There is no certain answer to that question, however, it is a certainty that a large number of patrons who previously only had one mega-plex choice will visit the new theatre.

If one half of the patrons in the contested trade area (36,205) were to begin attending the Prairie Lake theatre instead of the Grand, the decline in attendance at the Grand 14 would be approximately 171,250, or 31.4% (this decline is based on the existing average number of visits per person to first run theatres in the Lincoln market of 4.73 times in 2004, see chart entitled 2004 Census Update and Existing Theatre Statistics).

For purposes of this assessment, since it is our belief that the Prairie Lake theatre will be in a competitive film zone, and will not be allowed to license all available film product, we assumed that slightly less than one half of the contested population living within the ten minute overlapped trade area will choose to attend the proposed new theatre at Prairie Lake. Experience indicates that the Grand will likely suffer a permanent loss of attendance of approximately 25% of current levels. The year one loss will likely be greater, perhaps as much as 35%, as patrons "try-out," or sample the new location. However, a well documented year two attendance "bounce-back," of approximately 10% can be expected.

If the Prairie Lake site were in a "free film zone," we believe that the cannibalization of attendance at the Grand would be potentially much greater. On certain films, or film genres, such as animated, or family films, assuming that the Prairie Lake site had obtained the film allocation, we would expect significant negative impact to the box office revenues of the Grand 14. One could also expect that matinee attendance at a suburban mega-plex will greatly exceed that of a downtown site, especially during summer months and holidays, when many public and private schools are closed.

Mega-Plex theatres, due to their ability to exhibit both more films, and to exhibit the most popular films on numerous screens at multiple show times, have significantly larger trade areas than typical multiplex theatres. Many mega-plex theatres, due to their locations, and amenities, draw patronage from entire markets. Given the relatively low amount of traffic congestion in Lincoln, combined with the off peak traffic time of most movie theatre attendance (nights, and weekends) the trade area for a mega-plex might easily extend to a 15 minute drive, or beyond.

In the analysis of the Prairie Lake site's potential impact upon The Grand, it is important to note that the 15 minute drive time population overlap between the two sites swells to 194,809 people. This overlap equates to 79% of the total population living within a 15 minute drive of the Grand 14, and 99.3% of the total population living within a 15 minute drive of the proposed Prairie Lake location. For this reason, our expected attendance decline of 25% at The Grand, should be viewed as a minimum. The potential magnitude of the attendance decline of The Grand 14 could be much greater.

Executive Summary of Statistical & Financial Model

Projected Number of Stabilized Prairie Lake Admissions for an 18 Screen Mega-Plex:	437,858
Admissions "transfer" from existing theatres:	344,984 (79%)
Predicted Market Expansion:	92,874 (6.4%)
Free Film Zone:	No
Existing or planned theatres within 5 miles of proposed site:	2 Existing 6 Screen Theatres (12 screens)
Current Population within 10 minute drive of the site:	87,349
Trade Area Population not served by existing Theatres:	4,575
Prairie Lake Theatre Projected Total Revenues (Avg.yrs.1-5):	$4,171,084
Projected Average Theatre Level Profit Before Rent (Yrs. 1-5):	$633,452
Projected Costs of "Slab on Grade" 18 Screen Theatre:	$20,792,000
Projected Annual Rent:	$1,673,756 $20.92 Per Foot
Proj. Prairie Lake Theatre Profit (Loss) after Rent (5 yr. avg.):	($1,040,304)

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F. Explanation of Assumptions Utilized to Create The Attendance, Financial and Capital Cost Model

In preparing this feasibility report, we conducted a thorough review of all the existing motion picture theatres in the surrounding trade area, including a physical inspection of each location. We reviewed and analyzed the most two recent calendar year's box office performance for each theatre, as well as the ticket price structure for admittance to each location. Based upon each location's reported revenues and average ticket price, we were able to determine each location's annual number of admissions.

Based on the average attendance per person in the trade area, we were able to impute a theoretical trade or "catchment" area population being served by each theatre. By comparing the imputed trade area to the 7 or 10 minute population count (whether to use the 7 or 10 minute demographic was based on site characteristics), we were able to come up with an estimated capture rate of the trade area. The actual trade area capture compared to the 7 or 10 minute drive time sample was 48.0% for all first run theatres serving Lincoln.

It is interesting, and alarming to note that in order to achieve attendance of 437,858, the Prairie Lake 18 will have to capture 100.7% of its entire 10 minute population base. The Prairie Lake Theatre site will have to achieve this unrealistic capture rate of the 10 minute trade area, despite operating within a competitive film zone with the Edgewood 6, and while sharing almost 100% patron overlap with the Southpointe 6, which based on co-tenancies and retail pull, is situated in a more desirable location.

Number of Year One Admissions – In order to project year one admissions, we first determined the amount of likely business to transfer from existing area theatres. This was accomplished after an inspection of the proposed site, and was determined based on road and traffic patterns, and the drive time population counts, vetted against the location of other operating 1st run commercial theatres (discount, or "dollar" houses are not figured into the calculation). The attached maps show the projected 5, 10 and 15 minute drive time population sample for the proposed site, and also highlights the location of competing theatres that will "share" the demographic available for theatre attendance.

Film Rent - Licensing fees for film product are typically paid on a declining percentage scale (70% of the gross in week 1, 60% the 2nd week, 50% the 3rd week, 40% the 4th week, and 35% thereafter). A large number of screens within a film zone, however, can actually drive up costs, as theatre operators exhibit films on more than one screen, increasing the amount of business garnered early in the film run and driving up the average cost for film. Our experience indicates that theatres in "competitive" film zones tend to "settle" film on the high side of industry norms, as an aggressive film settlement stance, might affect future product allocations.

Balance of Financial Model Assumptions

Concession Sales, Cost of Concessions – Concession sales per capita at first run theatres average approximately $2.50 nationwide, depending upon the demographic makeup of the target market, and the product offerings of the operators. Based on the historical market data that we have on Lincoln, however, the trade area produced a per capita concession sale of slightly greater than $2.00 in 2003. Therefore a

$2.25 average concession sale was extrapolated due to inflation. A 15%-18% cost of concession items should be anticipated depending upon the mix of sales, and buying power of the operator. Larger chains are able to drive their cost of concessions much lower based on volume purchase discounts, and purchase rebates. Some chains have concession costs that are well below 10%.

Annual Lease Costs Per Square Foot – The rent figure of approximately $1,600,000 was calculated by applying an 11.5% "cap rate" to the "developer's" 70% of the projected costs of the Prarie Lake theatre, and then dividing the result by the projected square feet of the theatre building, which at 80,000 square feet results in a $20.00 per foot rent. This per square foot rent is a bit high for an 80,000 square foot anchor, but unless the developer is willing to subsidize the theatre (which many times does happen), due to its inherent costs and intensive land use, the projected rent is in a realistic range. In order to absorb these very high rent factors, most mega-plex theatres are built with the anticipation of achieving year one admissions of 800,000 to 1,000,000. With this number of admissions required to cover the occupancy costs, and produce a profit, it is easy to understand why most mega-plex theatres are constructed in larger markets, with trade area population draws of 150,000 to 200,000.

Common Area Maintenance Expense (CAM); Real and Personal Property Taxes – Common area maintenance is an estimated cost based on past experience of approximately $2.00 per square feet of building area, which may include some subsidy from the "small shop" tenants. This line item includes the cleaning, sweeping, snow removal, and maintenance of the exterior grounds, and parking lot. The real estate and personal property taxes, are calculated on the current levy within the City of Lincoln, which is $2.0508170 per $100 dollars in assessed value. The declining amount reflects the depreciation (for tax purposes) of the personal property at an accelerated rate of 7 years.

Operating Expenses - The pro-forma operating expenses are based upon our industry knowledge of the costs to operate mega-plex theatres, and include appropriate estimates for labor, repair and maintenance, appropriate service contracts, and estimations of utilities, phone service, etc.

Capital Required to Complete the Project

Construction Costs - Based upon our past experience constructing motion pictures theatres, as well as current trends regarding the cost of construction, we estimate that the per square foot construction costs, to build a theatre upon the proposed site is $130.00 per foot. This estimate assumes a "pad ready" site with utilities stubbed to within 5 feet of the building's "utility" entrance. This cost estimate does not include any cost for rough, or fine grading, pad preparation, parking lot construction, curbs, side walks, or landscaping.

Other Capital Costs - In addition to the $130.00 per square foot for construction, other expense items that will be incurred include: building permits; architectural design fees (including mechanical, structural, plumbing, electrical, and acoustical engineering fees); legal costs; costs for coordination of theatre up-fit between general contractor and equipment installer's; the theatre equipment (FF&E) including screens, frames, drapes & wall coverings, seats, sound systems, projectors, concession stand and equipment, box office mill work, point of sale system, and building signage both interior and exterior). We estimate that the cost of all FF&E items, including signage, to approximate $225,000 per screen. We have included a contingency equal to 5% of the costs of construction. This contingent figure should be budgeted to handle RFI's (requests for information or drawing clarifications), change orders, adverse weather conditions, etc.

Land Cost; Site Work - According to the City of Lincoln's property assessment office, equivalent land in the immediate area surrounding the proposed Prairie Lake site, has been valued in a range of $3.50 per square foot to in excess of $6.50 per foot for smaller, "frontage" parcels. For a large tract to handle a theatre, with access, utilities and zoning, we estimate the value of land at approximately $5.00 per square foot, or $174,240 per acre. This estimate places a value on 15 acres at the proposed site of approximately $3,267,000. A reasonable estimate for site work and site engineering is $100,000 per acre, producing an estimated cost for 15 acres equal to $1,500,000. The estimated grand total cost of the project, including a value for 15 acres of land, the estimated site work, the equipment, signage, soft costs and contingency is $20,792,000, or $1,155,111 per screen.

Financial Model Summary – The financial model is the synthesis of the market demographic research, and combines the projected attendance and projected costs into a single model that can be utilized to make a "go, no go" decision. In most cases, chain retailers look for cash on cash returns that average 20% or more, as there is little residual value at the end of the term in a leased location. In the attached model, based on a twenty year building lease, and an investment of approximately $6,000,000 (FF&E plus architectural and up fit, and leasehold costs), we predict that a theatre operator at Prairie Lake will never achieve a return on investment, and that no prudent theatre operator would build the proposed theatre on the proposed site.

G. Summary & Conclusions

The successful operation of movie theatres is highly dependent upon achieving reasonable volumes of attendance. Once break even attendance is achieved, theatres can prosper into lucrative businesses. Due to the embedded and inelastic cost structure of operating mega-plex theatres (i.e., high fixed costs for labor, occupancy [or debt amortization], utilities and upkeep), if appropriate volumes are not attained, locations may never achieve positive cash flow.

Based on the predicted attendance decline at the Grand 14 due to the opening of a mega-plex at Prairie Lake, it will be difficult if not impossible for the Grand to produce enough profit to cover its estimated debt service, or to produce a return on investment for the operator. An attendance shift to the proposed Prairie Lake Mega-Plex Theatre will cause economic hardship not only to the existing theatres already serving an over screened market, but also to the nearby retail and food establishments relying upon the traffic (business) generated by theatre patrons.

Due to the abundance of screens already serving the Lincoln, NE market, it is unlikely that a prudent theatre operator would incur the economic risk of constructing a mega-plex upon the proposed Prairie Lake site. The trade area population overlap, combined with the sparse population to the southeast, and the proximity to the Edgewood 6 significantly diminish the economic prospects for a theatre at the proposed location.

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Attachment 1

Current Statistical Model of Lincoln Theatre Market

Location	No. Scrs.Open	2003 Box Office	2003 Box Office Per Screen	2004 Box Office	2004 Box Office Per Screen	Projected 2005 Annual Box Office	Projected Annual Box Office Per Screen	% Box Office Change '04 - '05	Est. Avg Ticket Price	Estimated Annual Attendance	Attendance Per Screen	Imputed Population of Trade Area (Based On Mkt. Attendance)	7 or 10 Minute Drive Time Population	% Capture of Trade Area
East Park 6	6	1,675,191	$279,199	1,713,519	285,587	1,154,000	$192,333	-32.7%	$6.21	185,829	30,972	39,249	117,313	33.5%
Edgewood 6	6	1,275,768	$212,628	1,677,445	279,574	1,341,000	$223,500	-20.1%	$6.21	215,942	35,990	45,609	92,059	49.5%
Southepointe 6	6	2,055,714	$342,619	2,088,612	348,102	1,811,000	$301,833	-13.3%	$6.21	291,626	48,604	61,594	123,248	50.0%
The Grand 14 (opened 11/19/04)	14		N/A	670,016	N/A	3,384,000	$241,714	405.1%	$6.21	544,928	38,923	115,093	194,810	59.1%
Starship 9 ($)	9	461,970	$51,330	447,443	49,716	445,000	$49,444	-0.5%	$2.00	222,500	24,722	39,836	125,028	31.9%
Cinema Twin (Est.) Closed	0	212,534	106,267	223,973	111,987	Closed	N/A	#######		N/A				
Douglas 3(Est.) Closed	0	475,847	158,616	491,185	163,728	Closed	N/A	#######		N/A				
Plaza 4 (Est.) Closed	0	592,633	148,158	469,910	117,478	Closed	N/A	#######		N/A				
Lincoln 3 (Est.) Closed	0	352,640	117,547	0	N/A	N/A	N/A	N/A		N/A				
Media Arts Center 2	2	Unavailabl	N/A	N/A	N/A	N/A	N/A	N/A		N/A				
Totals (or Weighted Avg Where Applicable)	43	$7,102,297	$182,110	$7,782,103	$185,288	$8,135,000	$198,415	4.5%	$5.57	1,460,825	35,630	N/A	N/A	44.8%
Totals or Avgs.(First Run Screens Only)	32	$6,640,327	$221,344	$7,334,660	$244,489	$7,690,000	$240,313	4.8%	$6.21	1,238,325	38,698			48.0%

2004 Census Update and Existing Theatre Statistics

Attachment 2

	2004 U.S. Census Bureau Est. Based on 2000 Census	
Population of Lincoln and Lancaster County (Including Student Population) Trade Area of 839 Sq. Miles	261,545	
Total Estimated Population	261,545	
Total Number of Screens Per Person in Trade Area	6,082	
Screens Per Person in United States as a Whole	8,207	(Source: MPA Market Research)
Excess Screens as a Percentage vs. U.S.	34.93%	
Projected 2004 Box Office Expenditure Per Person in Trade Area	$31.10	
Projected Average Ticket Price	$5.57	
Average 1st Run Admission Price	$6.21	
Annual Estimated Movie Theatre Visits Per Person in Trade Area	5.59	U.S. Avg. 5.23 in 2004 (Source MPA Market Research)
Avg. First Run Visits Per Person in Trade Area	4.73	

Pro-Forma Statistical Model of Lincoln Theatre Market After Addition of Prarie Lake 18

Location	No. Scrs. Open	Existing Annual Attendance	Stabilized Attendance Drop Due to New Construction (1)	Projected Market Attendance Expansion	Projected Annual Attendance Post Prairie Lake	Projected Annual Attendance Per Screen	Projected Annual Box Office Revenues Post Prairie Lake	Projected Annual Box Office Per Screen	Est. Average Ticket Price	Imputed Trade Area Based on Attendance at 1st Run Theatres	7 or 10 Minute Drive Time Population	% Capture of Trade Area	Trade Area Overlap W/ Proposed Site	% Overlap	15 Minute Population Sample	Population Overlap	% Overlap
East Park 6	6	185,829	-15.0%		157,955	26,326	1,010,911	$168,485	$6.40	31,729	117,313	27.0%	37,076	31.6%			
Edgewood 6	6	215,942	-50.0%		107,971	17,995	691,014	$115,169	$6.40	21,689	92,059	23.6%	79,912	86.8%			
Southepointe 6	6	291,626	-25.0%		218,720	36,453	1,399,807	$233,301	$6.40	43,935	117,852	37.3%	107,282	91.0%			
The Grand 14 (opened 11/19/04)	14	544,928	-25.0%		408,696	29,193	2,615,652	$186,832	$6.40	82,096	194,810	42.1%	72,410	37.2%	247,308	194,809	78.8%
Starship 9 ($)	9	222,500	N/A		222,500	24,722	222,500	$24,722	$2.00	38,294	125,028	30.6%					
Cinema Twin (Est.) Closed	0	Closed	N/A					N/A									
Douglas 3(Est.) Closed	0	Closed	N/A					N/A									
Plaza 4 (Est.) CL	0	Closed	N/A					N/A									
Lincoln 3 (Est.) CL	0	N/A	N/A					N/A									
Media Arts Cent	N/A	N/A	N/A					N/A									
Proposed Prarie Lake 18	18	Att. Transfer:	344,984	92,874	437,858	24,325	2,802,293	$155,683	$6.40	87,954	87,349	100.7%			196,111		
Totals (or Weighted Avg. Where Applicable)	59	1,460,825			1,553,700	26,334	$8,742,178	$26,334	$5.63	267,404	N/A	32.1%					
Totals or Avgs.(First Run Screens Only)	50	1,238,325			1,331,200	26,624	$8,519,678	$26,624	$6.40			32.5%					

Attachment 4

2006 Census Update W/ Growth Applied & Projected Theatre Statistics

	2004 U.S. Census Bureau Est. Based on 2000 Census	
Population of Lincoln and Lancaster County (Including Student Population) Trade Area of 839 Sq. Miles	261,545	
Annual Growth Rate 2001-2004	1.12%	
Total Estimated Population in 2006 (2.24% increase over 2004)	267,404	
Number of Screens Per Person in Trade Area	4,532	
Screens Per Person in United States as a Whole	8,207	(Source: 2004 MPA Market Research)
Excess Screens as a Percentage vs. U.S.	81.08%	
Number of First Run Screens Per Person in Trade Area	5,348	
Projected Box Office Expenditure Per Person in Trade Area	$32.69	
Projected Average Ticket Price	$5.63	
Average 1st Run Admission Price	$6.40	
Annual Estimated Movie Theatre Visits Per Person in Trade Area	5.81	U.S. Avg. 5.23 in 2004 (Source MPA Market Research)
Avg. First Run Visits Per Person in Trade Area	4.98	

Attachment 5

Prairie Lake 18
Lincoln, NE
Likely Case

Summary Attendance, Financial Model Prairie Lake 18
PRO-FORMA SUMMARY OPERATING RESULTS

Assumptions	Year 1		Year 2		Year 3		Year 4		Year 5	
Projected Annual Admissions	437,858		446,615		451,081		451,081		451,081	
REVENUES										
Box Office Sales (Net of tax if any)	2,802,291	72.6%	2,944,087	76.3%	3,062,734	79.4%	3,154,616	81.7%	3,249,254	84.2%
Concession Sales (net)	985,181	25.5%	1,027,215	26.6%	1,060,041	27.5%	1,082,595	28.1%	1,105,149	28.6%
Miscellaneous (Scr. Advertising, Rentals, Video Games, etc.)	72,000	1.9%	74,160	1.9%	76,385	2.0%	78,676	2.0%	81,037	2.1%
TOTAL REVENUES	3,859,472	100.0%	4,045,462	100.0%	4,199,160	100.0%	4,315,887	100.0%	4,435,440	100.0%
COST OF SALES										
Total Cost of Film & Concessions	1,634,524	42.4%	1,715,824	42.4%	1,783,429	42.5%	1,835,267	42.5%	1,888,539	42.6%
Gross Profit	2,224,948	57.6%	2,329,638	57.6%	2,415,731	57.5%	2,480,620	57.5%	2,546,901	57.4%
OPERATING EXPENSES										
Operating Expenses	1,017,516	26.4%	1,042,048	25.8%	1,069,457	25.5%	1,096,805	25.4%	1,129,874	25.5%
Start-Up Pre-Opening Expenses - Mktg	135,000	3.5%	5,500	0.1%	5,665	0.1%	5,835	0.1%	6,010	0.1%
CAM	160,000	4.1%	160,000	4.0%	160,000	3.8%	160,000	3.7%	160,000	3.6%
Real Estate & Pers. Property Taxes	200,000	5.2%	414,529	10.2%	402,651	9.6%	390,807	9.1%	378,944	8.5%
Utilities	135,082	3.5%	141,591	3.5%	146,971	3.5%	151,056	3.5%	155,240	3.5%
Total Expenses Before Occupancy	1,647,597	42.7%	1,763,667	43.6%	1,784,744	42.5%	1,804,503	41.8%	1,830,068	41.3%
Operating Profit Before Occupancy	577,350	15.0%	565,971	14.0%	630,987	15.0%	676,117	15.7%	716,833	16.2%
Target Rent	1,673,756	43.4%	1,673,756	41.4%	1,673,756	39.9%	1,673,756	38.8%	1,673,756	37.7%
Profit (Loss) After Occupancy Costs	-1,096,406	-28.4%	-1,107,785	-27.4%	-1,042,769	-24.8%	-997,639	-23.1%	-956,923	-21.6%

Capital Costs 18 Screens

Build To Suit Lease Hypothetical Return Analysis

Attachment 6

Assumptions	
Estimated Construction Costs P.S.F:	$130.00
---Constr. Costs	10,400,000
Soft Costs P.S.F. (Architects, MEP&A Consultants, Development Fees, etc.)	$5.00
Equipment Costs Per Screen (FF& E)	$225,000
Square Feet of Improvements:	80,000

Total Estimated Capital Costs	
Land (15 Acres Est. @ $5.00 p.f.)	3,267,000
Site Work	1,500,000
Building - Total Construction Costs	10,400,000
Building - Signage (In FF&E Budget)	200,000
Building - Casework (In FF&E Budget	100,000
Building - HVAC (In Constr. Est.)	0
Building - Upfit (Co-ordination bet. GC/ Theatre Operator)	150,000
Permits (Estimate)	30,000
Other	0
Soft Costs (Architectural, Etc.)	400,000
Legal	25,000
Equipment	4,050,000
Grand Opening Marketing	150,000
Contingency (5% of Constr. Costs)	520,000
Total Project Cost	20,792,000

Total Investment	20,792,000
Less Public Sector Investment	0
Net Private Sector Investment	20,792,000

Typical Build to Suit Capital Structure	
Developer 70% of Costs:	14,554,400
Tenant 30% of Costs:	6,237,600
Target Rent (11.5% of Dev. Inv.):	1,673,756
Rent Per Square Foot	$20.92
Equity Required from Theatre Tenant	2,187,600

Developer Return Analysis	
Year 0	-14,554,400
Year 1 (assume 5% accel. every 5th y	1,673,756
Year 2	1,673,756
Year 3	1,673,756
Year 4	1,673,756
Year 5	1,673,756
Year 6	1,757,444
Year 7	1,757,444
Year 8	1,757,444
Year 9	1,757,444
Year 10	1,757,444
Year 11	1,889,252
Year 12	1,889,252
Year 13	1,889,252
Year 14	1,889,252
Year 15	1,889,252
Year 16	1,983,715
Year 17	1,983,715
Year 18	1,983,715
Year 19	1,983,715
Year 20	1,983,715
Residual Value	5,000,000.0

Average Return on Investment	12.55%
IRR	11.03%
Payback (Cash on Cash)	7.96

Ad Valorem and Pers. Property Tax Calculation

	Real Property	Pers. Property	
Total Value	16,742,000	4,050,000	
Tax Rate	2.050817	2.050817	
Proj. Taxes	343,348	83,058 (REDUCING OVER 7 YEARS TO 0	
Proj. Fully Assessed Taxes		426,406	
Per Square Foot Fully Assessed			$5.33
Year 2		414,529	$5.18
Year 3		402,651	$5.03
Year 4		390,807	$4.89
Year 5		378,944	$4.74

Grand 14
Lincoln, NE
Cannibalized Attendance

Summary Attendance, Financial Model Grand 14
PRO-FORMA SUMMARY OPERATING RESULTS

	Year 1 Effected		Year 2		Year 3		Year 4		Year 5	
Assumptions										
Projected Annual Admissions	338,400		372,240		372,240		372,240		372,240	
REVENUES										
Box Office Sales (Net of tax if any)	2,165,760	72.6%	2,453,806	72.9%	2,527,420	73.0%	2,603,243	73.2%	2,681,340	73.3%
Concession Sales (net)	761,400	25.5%	856,152	25.4%	874,764	25.3%	893,376	25.1%	911,988	24.9%
Miscellaneous (Scr. Advertising, Rentals, Video Games, etc.)	56,000	1.9%	57,680	1.7%	59,410	1.7%	61,193	1.7%	63,028	1.7%
TOTAL REVENUES	2,983,160	100.0%	3,367,638	100.0%	3,461,595	100.0%	3,557,812	100.0%	3,656,357	100.0%
COST OF SALES										
Total Cost of Film & Concessions	1,263,247	42.3%	1,430,087	42.5%	1,471,716	42.5%	1,514,494	42.6%	1,558,455	42.6%
Gross Profit	1,719,913	57.7%	1,937,552	57.5%	1,989,879	57.5%	2,043,318	57.4%	2,097,902	57.4%
OPERATING EXPENSES										
Operating Expenses	1,003,655	33.6%	1,034,093	30.7%	1,059,917	30.6%	1,086,409	30.5%	1,118,586	30.6%
Start-Up Pre-Opening Expenses - Mktg	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
CAM	134,900	4.5%	134,900	4.0%	134,900	3.9%	134,900	3.8%	134,900	3.7%
Real Estate & Pers. Property Taxes	300,776	10.1%	291,539	8.7%	282,320	8.2%	273,089	7.7%	263,857	7.2%
Utilities	104,411	3.5%	117,867	3.5%	121,156	3.5%	124,523	3.5%	127,972	3.5%
Total Expenses Before Occupancy	1,543,742	51.7%	1,578,398	46.9%	1,598,293	46.2%	1,618,921	45.5%	1,645,316	45.0%
Operating Profit Before Occupancy	176,171	5.9%	359,153	10.7%	391,586	11.3%	424,397	11.9%	452,586	12.4%
Estimated Loan Amortization	827,599	27.7%	827,599	24.6%	827,599	23.9%	827,599	23.3%	827,599	22.6%
Cash Flow (Loss) After Loan Amort.	-651,428	-21.8%	-468,446	-13.9%	-436,013	-12.6%	-403,202	-11.3%	-375,013	-10.3%

Estimated Capital Costs for The Grand 14

Attachment 8

Fee Development by Theatre Company

Assumptions

Estimated Construction Costs P.S.F:	$130.00
—Constr. Costs	8,768,500
Soft Costs P.S.F. (Architects, MEP&A Consultants, Development Fees, etc.)	$6.00
Equipment Costs Per Screen (FF& E):	$225,000
Square Feet of Improvements:	67,450

Total Estimated Capital Costs	
Land	1,400,000
Site Work	700,000
Building - Total Construction Costs	8,768,500
Building - Signage (In FF&E Budget)	0
Building - Casework (In FF&E Budget)	0
Building - HVAC (In Constr. Est.)	0
Building - Upfit (Co-ordination bet. GC/ Theatre Operator)	200,000
Permits (Estimate)	30,000
Other	0
Soft Costs (Architectural, Etc.)	404,700
Legal	25,000
Equipment	3,150,000
Grand Opening Marketing	0
Contingency (5% of Constr. Costs)	438,425
Total Project Cost	15,116,625

Total Investment	15,116,625
Less Public Sector Investment	-4,000,000
Net Private Sector Investment	11,116,625

Typical Build to Suit Capital Structure	
Operator Finance 70% of Costs:	7,781,638
Equity Requirement 30% of Costs:	3,334,988

Theatre Operator Loan	7,781,638
Annual Note Payment (15 yrs. @ 6.5%)	827,599

Cash Flow Return Analysis	
Year 0	-11,116,625
Year 1	172,401
Year 2	346,401
Year 3	-651,428
Year 4	-468,446
Year 5	-436,013
Year 6	-403,202
Year 7	-375,013
Year 8	-375,013
Year 9	-375,013
Year 10	-375,013
Year 11	-384,388
Year 12	-384,388
Year 13	-384,388
Year 14	-384,388
Year 15	-384,388
Year 16	1,257,556
Year 17	1,194,678
Year 18	1,075,210
Year 19	1,021,450
Year 20	817,160
Residual Value	4,000,000.0

Average Return on Investment	0.32%
IRR	-3.28%

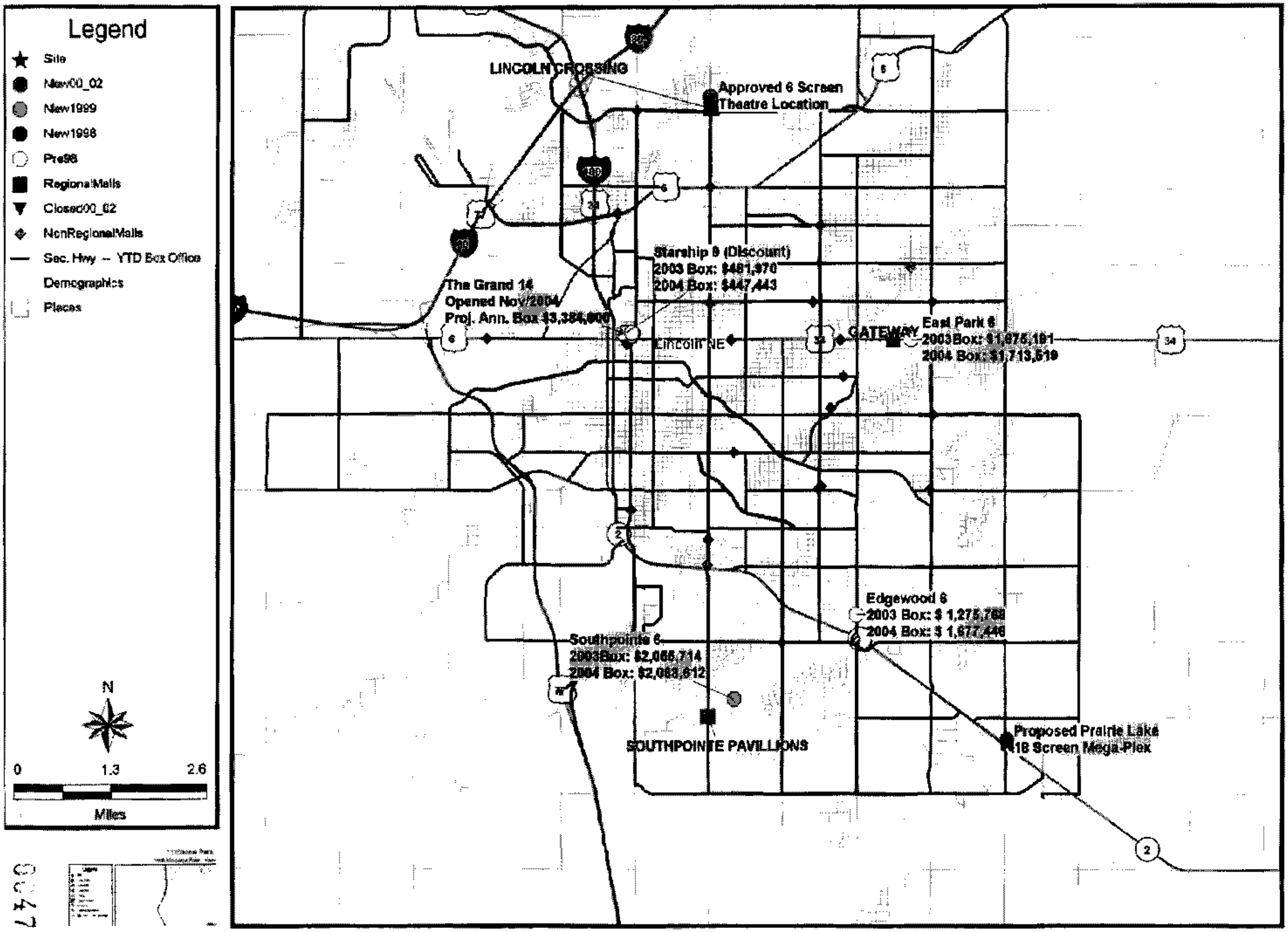
Ad Valorem and Pers. Property Tax Calculation

	Real Property	Pers. Property	
Total Value	11,966,625	3,150,000	
Tax Rate	2.050817	2.050817	
Proj. Taxes	245,414	64,601 (REDUCING OVER 7 YEARS TO 0)	
Proj. Fully Assessed Taxes		310,014	
Per Square Foot Fully Assessed			$4.60
Year 2		300,776	$4.46
Year 3		291,539	$4.32
Year 4		282,320	$4.19
Year 5		273,089	$4.05
		263,857	$3.91

Attachment 9

Lincoln, Nebraska

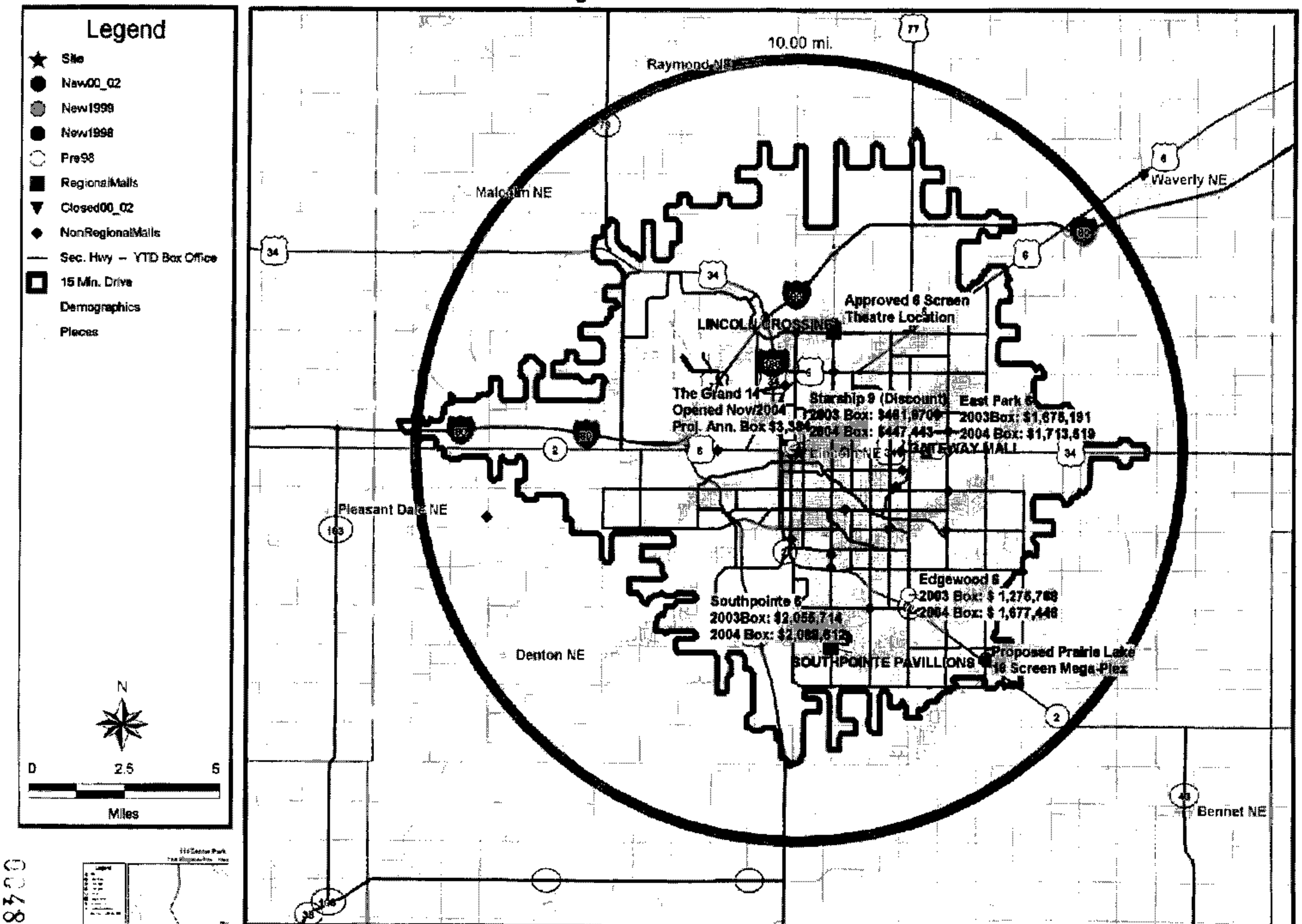
Theatre Map



Attachment 10

Lincoln, Nebraska

10 Mile Ring   15 Minute Trade Area



R-T Associates
Site Report
by Census 2000 Block Group

Site: Lincoln, Nebraska
10 Mile Radius
From The Center of Town

Site Coordinates:
Longitude/X: -96.698907
Latitude/Y: 40.813426

	10.00 MILE RING 313.96 sq/mi
POPULATION	
2006 Total Proj. Population	255,198
2001 Total Est. Population	239,074
2001-2006 Change	16,125
2001-2006 Pop. Growth	6.74%
2001 HOUSEHOLD INCOME	
% Households by income <$25,000	27.53%
% Households by income $25,000 - $35,000	12.80%
% Households by income $35,000 - $45,000	12.05%
% Households by income $45,000 - $55,000	10.38%
% Households by income $55,000 - $75,000	15.34%
% Households by income $75,000 - $100,000	10.41%
% Households by income $100,000 - $125,000	5.16%
% Households by income $125,000 - $150,000	2.51%
% Households by income $150,000 - $250,000	2.85%
% Households by income $250,000 - $500,000	.97%
% Households by income $500,000+	.21%
Median Household Income	$44,800
Average Household Income	$56,027
2001 DISPOSABLE HOUSEHOLD INCOME	
% Disposable HH income <$25,000	36.62%
% Disposable HH income $25,000 - $35,000	16.31%
% Disposable HH income $35,000 - $50,000	18.07%
% Disposable HH income $50,000 - $75,000	19.07%
% Disposable HH income $75,000 - $100,000	6.29%
% Disposable HH income $100,000 - $150,000	2.17%
% Disposable HH income $150,000+	1.48%
2001 POPULATION BY RACE/AGE	
% White Population	89.14%
% Asian Population	3.26%
% Hispanic Population	3.67%
% Black Population	3.08%
% Mixed Race Population	1.94%
% Other Population	1.87%
2001 Median Age	33.7
2001 Average Age	34.8

Data Source: ESRI Business Systems

Attachment 12

R-T Associates
Site Report
by Census 2000 Block Group

Site:	Lincoln, Nebraska 15 Minute Drive Time Area From Center of Town	Site Coordinates: Longitude/X: Latitude/Y:	 -96.698907 40.813426

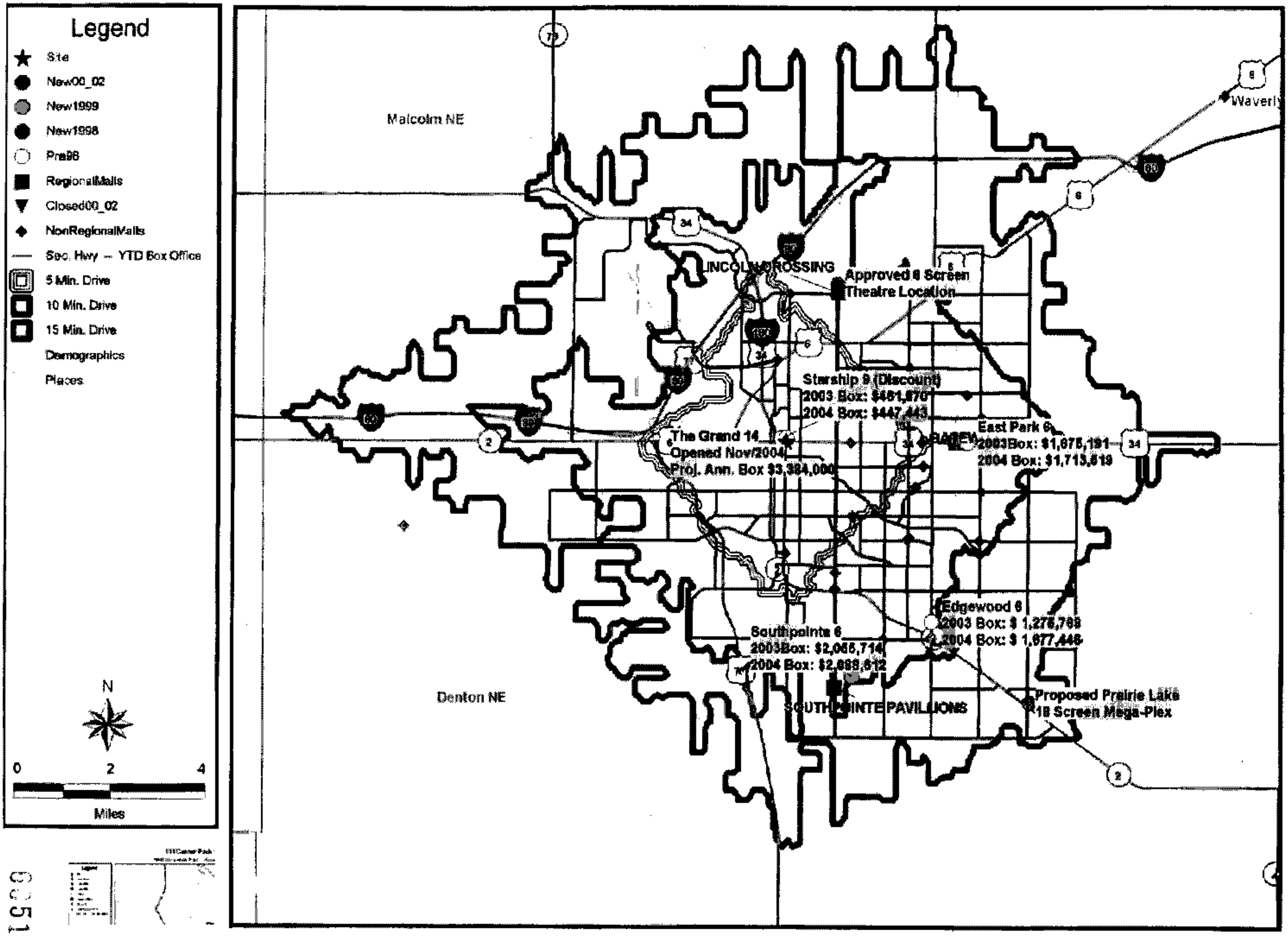
	DRIVE TIME 15 min.
POPULATION	
2006 Total Proj. Population	247,125
2001 Total Est. Population	231,739
2001-2006 Change	15,386
2001-2006 Pop. Growth	6.64%
2001 HOUSEHOLD INCOME	
% Households by income <$25,000	27.84%
% Households by income $25,000 - $35,000	12.87%
% Households by income $35,000 - $45,000	12.10%
% Households by income $45,000 - $55,000	10.35%
% Households by income $55,000 - $75,000	15.22%
% Households by income $75,000 - $100,000	10.27%
% Households by income $100,000 - $125,000	5.09%
% Households by income $125,000 - $150,000	2.49%
% Households by income $150,000 - $250,000	2.82%
% Households by income $250,000 - $500,000	.96%
% Households by income $500,000+	.19%
Median Household Income	$44,406
Average Household Income	$55,646
2001 DISPOSABLE HOUSEHOLD INCOME	
% Disposable HH income <$25,000	36.97%
% Disposable HH income $25,000 - $35,000	16.34%
% Disposable HH income $35,000 - $50,000	18.00%
% Disposable HH income $50,000 - $75,000	18.87%
% Disposable HH income $75,000 - $100,000	6.21%
% Disposable HH income $100,000 - $150,000	2.15%
% Disposable HH income $150,000+	1.46%
2001 POPULATION BY RACE/AGE	
% White Population	88.92%
% Asian Population	3.34%
% Hispanic Population	3.74%
% Black Population	3.14%
% Mixed Race Population	1.96%
% Other Population	1.91%
2001 Median Age	33.5
2001 Average Age	34.8

Data Source: ESRI Business Systems

Attachment 13

The Grand 14

5, 10, 15 Min. Drive Time   Trade Areas



Attachment 14

R-T Associates
Site Report
by Census 2000 Block Group

Site: The Grand 14
Drive Time Population Sample
Moderate Traffic

Site Coordinates:
Longitude/X: -96.704778
Latitude/Y: 40.814126

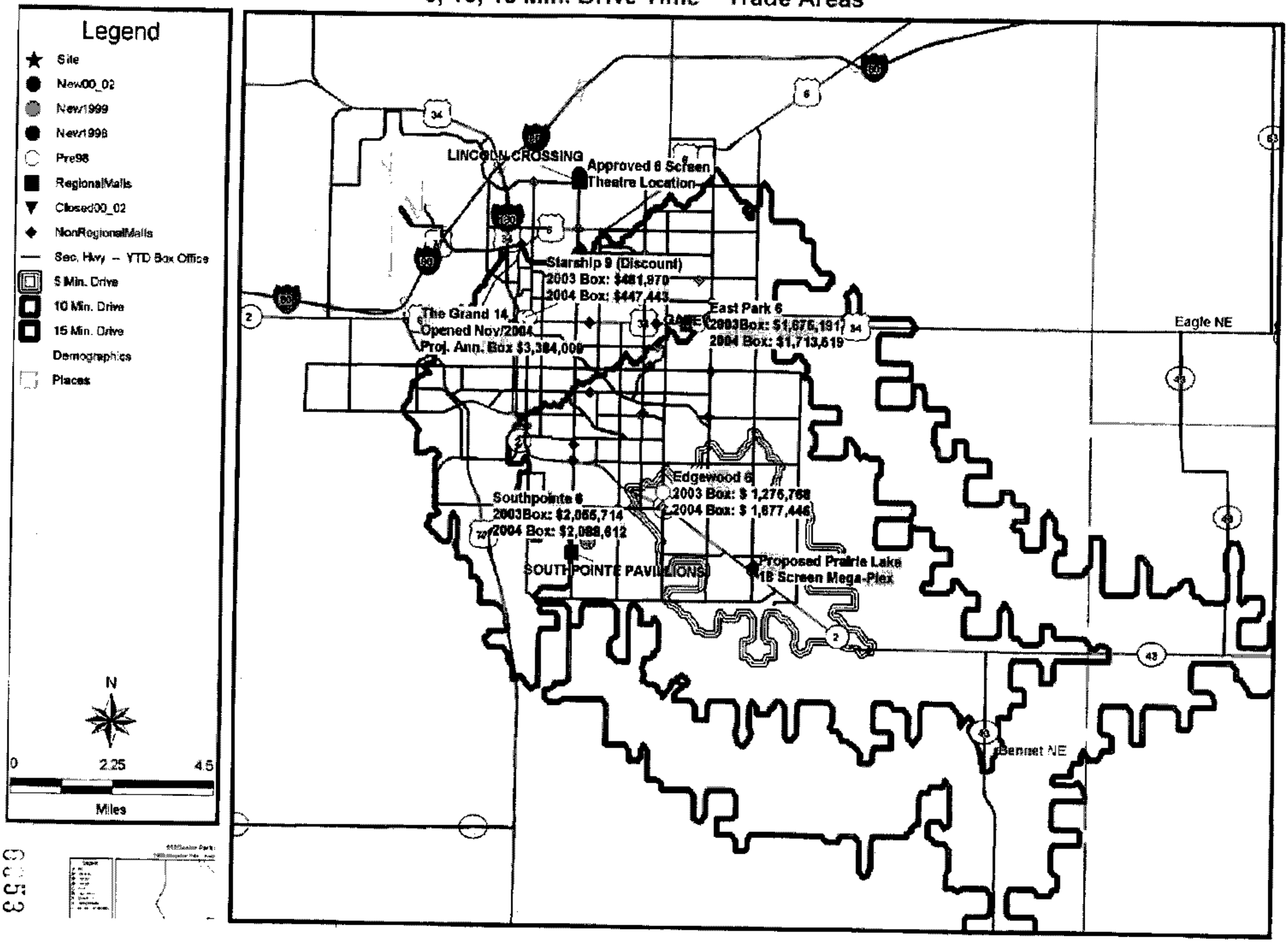
	DRIVE TIME 5 min.	DRIVE TIME 10 min.	DRIVE TIME 15 min.
POPULATION			
2006 Total Proj. Population	83,936	198,389	247,308
2001 Total Est. Population	79,908	188,181	231,906
2001-2006 Change	4,028	10,208	15,401
2001-2006 Pop. Growth	5.04%	5.42%	6.64%
2001 HOUSEHOLD INCOME			
% Households by income <$25,000	40.23%	30.39%	27.84%
% Households by income $25,000 - $35,000	14.23%	13.32%	12.87%
% Households by income $35,000 - $45,000	12.25%	12.37%	12.10%
% Households by income $45,000 - $55,000	8.77%	10.20%	10.35%
% Households by income $55,000 - $75,000	11.77%	14.41%	15.22%
% Households by income $75,000 - $100,000	6.49%	9.31%	10.28%
% Households by income $100,000 - $125,000	2.86%	4.48%	5.09%
% Households by income $125,000 - $150,000	1.42%	2.19%	2.49%
% Households by income $150,000 - $250,000	1.44%	2.46%	2.81%
% Households by income $250,000 - $500,000	.54%	.87%	.96%
% Households by income $500,000+	.06%	.14%	.19%
Median Household Income	$32,255	$41,278	$44,411
Average Household Income	$42,400	$52,110	$55,641
2001 DISPOSABLE HOUSEHOLD INCOME			
% Disposable HH income <$25,000	50.34%	39.81%	36.97%
% Disposable HH income $25,000 - $35,000	16.04%	16.62%	16.34%
% Disposable HH income $35,000 - $50,000	15.21%	17.51%	18.00%
% Disposable HH income $50,000 - $75,000	12.98%	17.42%	18.88%
% Disposable HH income $75,000 - $100,000	3.56%	5.45%	6.21%
% Disposable HH income $100,000 - $150,000	1.13%	1.91%	2.14%
% Disposable HH income $150,000+	.73%	1.28%	1.46%
2001 POPULATION BY RACE/AGE			
% White Population	82.38%	87.86%	88.92%
% Asian Population	5.07%	3.64%	3.34%
% Hispanic Population	6.13%	4.12%	3.74%
% Black Population	5.07%	3.46%	3.14%
% Mixed Race Population	2.96%	2.13%	1.96%
% Other Population	3.33%	2.12%	1.91%
2001 Median Age	29.2	32.9	33.5
2001 Average Age	32.0	34.8	34.8

Data Source: ESRI Business Systems

Attachment 15

Proposed Prairie Lake 18

5, 10, 15 Min. Drive Time Trade Areas



R-T Associates
Site Report
by Census 2000 Block Group

Site: Prairie Lake Theatre Site
5, 10, 15 Minute Demographics
Based on "Moderate" Traffic

Site Coordinates:
Longitude/X: -96.604196
Latitude/Y: 40.735767

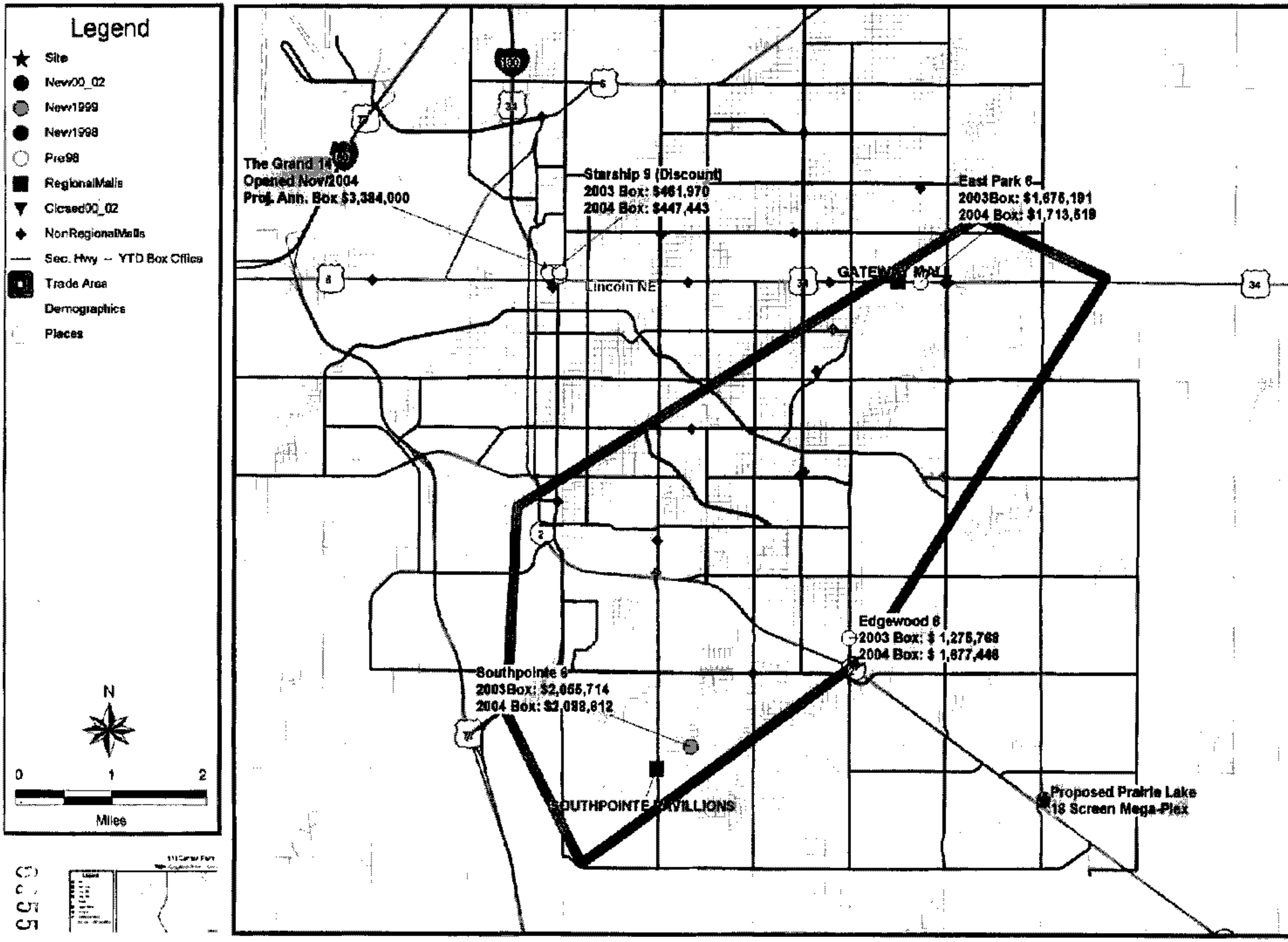
	DRIVE TIME 5 min.	DRIVE TIME 10 min.	DRIVE TIME 15 min.
POPULATION			
2006 Total Proj. Population	9,905	87,349	196,111
2001 Total Est. Population	9,095	81,537	185,756
2001-2006 Change	810	5,812	10,354
2001-2006 Pop. Growth	8.91%	7.13%	5.57%
2001 HOUSEHOLD INCOME			
% Households by income <$25,000	10.89%	15.60%	27.19%
% Households by income $25,000 - $35,000	9.70%	10.84%	12.52%
% Households by income $35,000 - $45,000	9.47%	11.34%	11.83%
% Households by income $45,000 - $55,000	10.85%	11.18%	10.18%
% Households by income $55,000 - $75,000	21.20%	18.20%	15.19%
% Households by income $75,000 - $100,000	17.20%	14.42%	10.63%
% Households by income $100,000 - $125,000	9.85%	7.98%	5.54%
% Households by income $125,000 - $150,000	4.01%	4.05%	2.73%
% Households by income $150,000 - $250,000	5.47%	4.80%	3.12%
% Households by income $250,000 - $500,000	1.36%	1.59%	1.07%
% Households by income $500,000+	.80%	.41%	.24%
Median Household Income	$62,954	$57,460	$45,473
Average Household Income	$75,270	$71,674	$57,478
2001 DISPOSABLE HOUSEHOLD INCOME			
% Disposable HH income <$25,000	17.92%	23.24%	36.04%
% Disposable HH income $25,000 - $35,000	13.77%	15.83%	16.06%
% Disposable HH income $35,000 - $50,000	21.26%	19.98%	17.84%
% Disposable HH income $50,000 - $75,000	29.10%	24.96%	19.28%
% Disposable HH income $75,000 - $100,000	11.55%	9.85%	6.78%
% Disposable HH income $100,000 - $150,000	3.69%	3.62%	2.38%
% Disposable HH income $150,000+	2.71%	2.51%	1.62%
2001 POPULATION BY RACE/AGE			
% White Population	95.06%	94.27%	89.57%
% Asian Population	2.28%	2.08%	3.15%
% Hispanic Population	1.55%	1.86%	3.60%
% Black Population	.81%	1.48%	2.97%
% Mixed Race Population	.91%	1.07%	1.83%
% Other Population	.79%	.84%	1.84%
2001 Median Age	38.8	38.3	34.6
2001 Average Age	36.2	37.5	35.5

Data Source: ESRI Business Systems

Attachment 17

Lincoln, Nebraska

The Grand 14 & Prairie Lake 18 10 Minute Trade Area Overlap



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R-T Associates
Site Report
by Census 2000 Block Group

Site: 10 Minute Drive Time Overlap
Moderate Traffic
Lincoln, NE

Site Coordinates:
Longitude/X: -96.604076
Latitude/Y: 40.735781

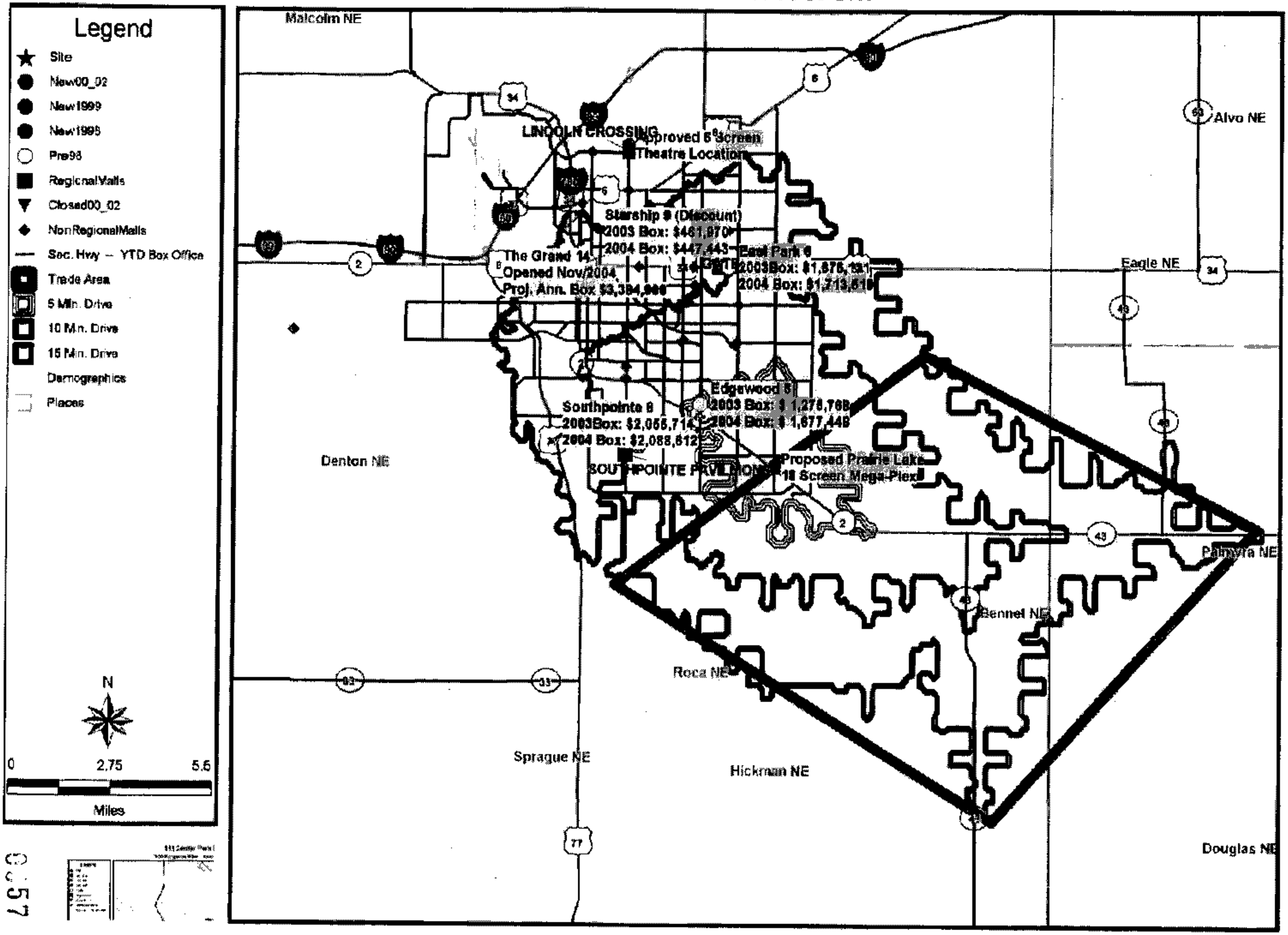
	TRADE AREA 17.7473 sq/mi
POPULATION	
2006 Total Proj. Population	72,410
2001 Total Est. Population	68,663
2001-2006 Change	3,747
2001-2006 Pop. Growth	5.46%
2001 HOUSEHOLD INCOME	
% Households by income <$25,000	17.00%
% Households by income $25,000 - $35,000	11.46%
% Households by income $35,000 - $45,000	11.87%
% Households by income $45,000 - $55,000	11.47%
% Households by income $55,000 - $75,000	17.66%
% Households by income $75,000 - $100,000	13.44%
% Households by income $100,000 - $125,000	7.33%
% Households by income $125,000 - $150,000	3.77%
% Households by income $150,000 - $250,000	4.48%
% Households by income $250,000 - $500,000	1.52%
% Households by income $500,000+	.32%
Median Household Income	$54,943
Average Household Income	$69,039
2001 DISPOSABLE HOUSEHOLD INCOME	
% Disposable HH income <$25,000	25.02%
% Disposable HH income $25,000 - $35,000	16.62%
% Disposable HH income $35,000 - $50,000	19.89%
% Disposable HH income $50,000 - $75,000	23.61%
% Disposable HH income $75,000 - $100,000	9.06%
% Disposable HH income $100,000 - $150,000	3.45%
% Disposable HH income $150,000+	2.36%
2001 POPULATION BY RACE/AGE	
% White Population	94.19%
% Asian Population	1.99%
% Hispanic Population	1.96%
% Black Population	1.51%
% Mixed Race Population	1.15%
% Other Population	.88%
2001 Median Age	38.4
2001 Average Age	38.2

Data Source: ESRI Business Systems

Attachment 19

Proposed Prairie Lake 18

15 Minute Trade Area   Southeast of Site



R-T Associates
Site Report
by Census 2000 Block Group

Site: Proposed Prairie Lake 18
15 Min. Drive Time Trade Area
Southeast of Site

Site Coordinates:
Longitude/X: -96.604884
Latitude/Y: 40.736483

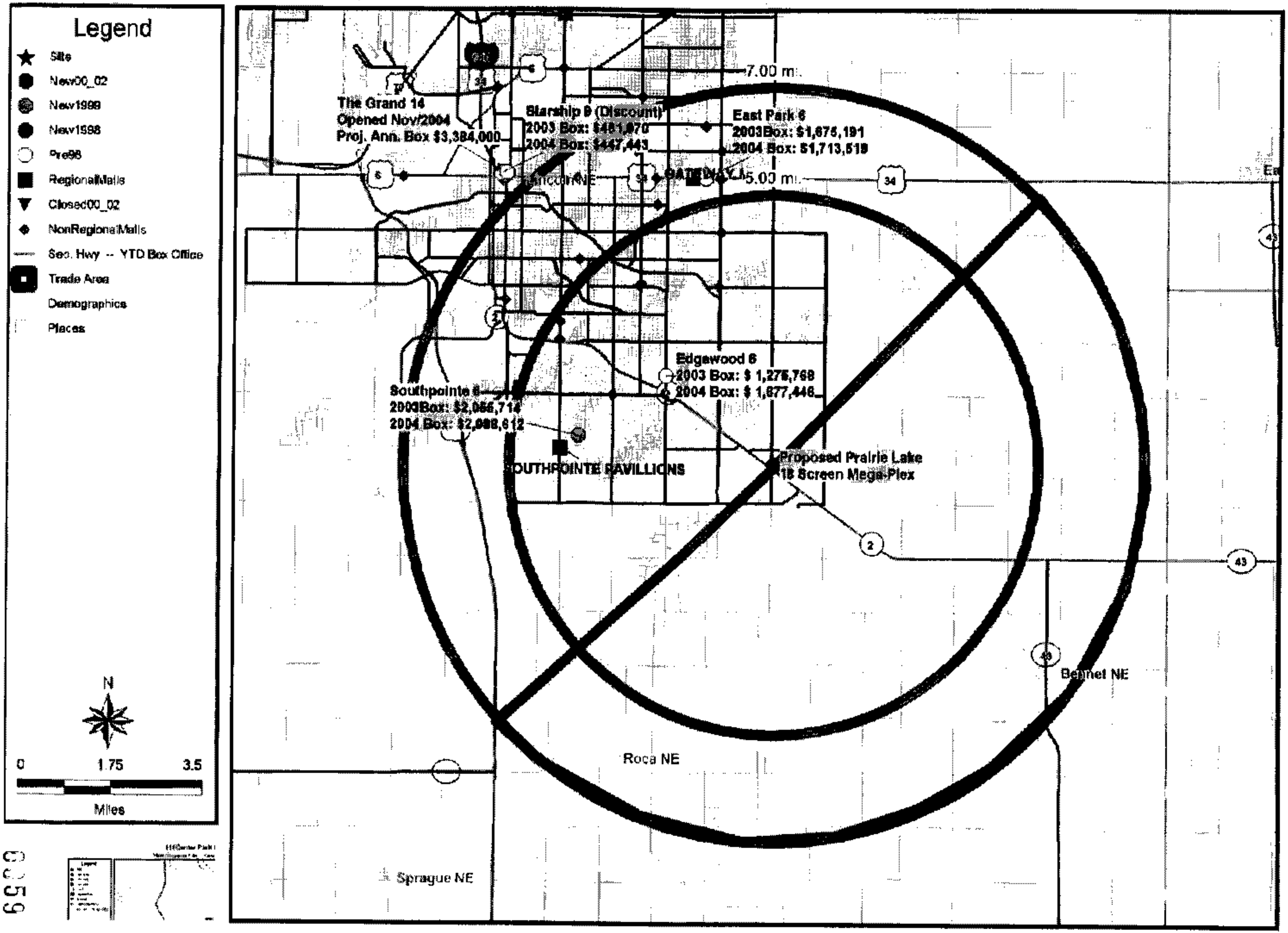
	TRADE AREA 107.94 sq/mi
POPULATION	
2006 Total Proj. Population	4,575
2001 Total Est. Population	4,191
2001-2006 Change	383
2001-2006 Pop. Growth	9.15%
2001 HOUSEHOLD INCOME	
% Households by income <$25,000	18.14%
% Households by income $25,000 - $35,000	12.84%
% Households by income $35,000 - $45,000	11.86%
% Households by income $45,000 - $55,000	11.47%
% Households by income $55,000 - $75,000	18.35%
% Households by income $75,000 - $100,000	14.62%
% Households by income $100,000 - $125,000	6.66%
% Households by income $125,000 - $150,000	2.87%
% Households by income $150,000 - $250,000	2.03%
% Households by income $250,000 - $500,000	1.16%
% Households by income $500,000+	.58%
Median Household Income	$52,983
Average Household Income	$62,006
2001 DISPOSABLE HOUSEHOLD INCOME	
% Disposable HH income <$25,000	27.89%
% Disposable HH income $25,000 - $35,000	16.63%
% Disposable HH income $35,000 - $50,000	19.97%
% Disposable HH income $50,000 - $75,000	24.68%
% Disposable HH income $75,000 - $100,000	7.87%
% Disposable HH income $100,000 - $150,000	1.85%
% Disposable HH income $150,000+	1.12%
2001 POPULATION BY RACE/AGE	
% White Population	97.60%
% Asian Population	.62%
% Hispanic Population	1.06%
% Black Population	.37%
% Mixed Race Population	.79%
% Other Population	.52%
2001 Median Age	40.1
2001 Average Age	37.2

Data Source: ESRI Business Systems

Attachment 21

Proposed Prairie Lake 18

5, 7 Mile Radius 1/2 of Southeastern Portion Of 7 MI



0059

Attachment 22

R-T Associates
Site Report
by Census 2000 Block Group

Site: Proposed Prairie Lake 18
5 & 7 Mile Radius

Site Coordinates:
Longitude/X: -96.605281
Latitude/Y: 40.736662

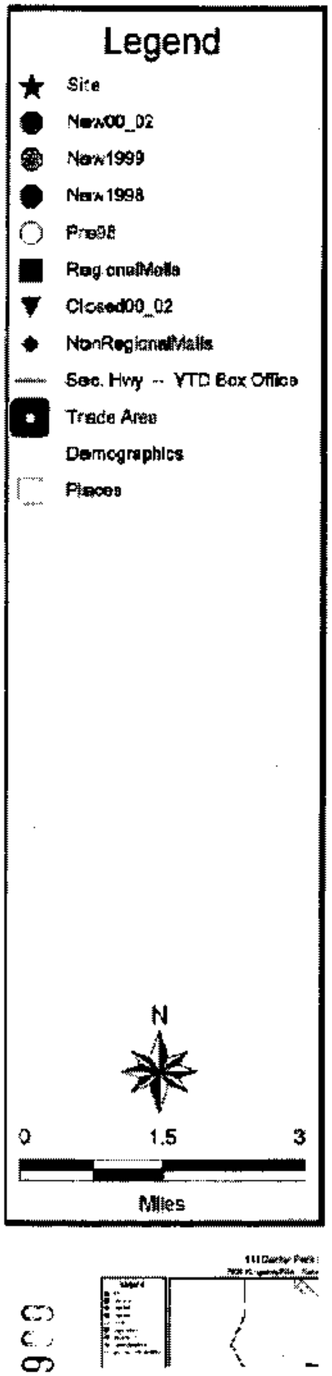
	5.00 MILE RING 78.49 sq/mi	7.00 MILE RING 153.84 sq/mi
POPULATION		
2006 Total Proj. Population	79,317	157,242
2001 Total Est. Population	73,234	148,928
2001-2006 Change	6,083	8,313
2001-2006 Pop. Growth	8.31%	5.58%
2001 HOUSEHOLD INCOME		
% Households by income <$25,000	14.67%	24.78%
% Households by income $25,000 - $35,000	10.53%	12.15%
% Households by income $35,000 - $45,000	11.20%	11.82%
% Households by income $45,000 - $55,000	10.99%	10.49%
% Households by income $55,000 - $75,000	18.31%	15.78%
% Households by income $75,000 - $100,000	14.84%	11.28%
% Households by income $100,000 - $125,000	8.33%	6.07%
% Households by income $125,000 - $150,000	4.27%	2.97%
% Households by income $150,000 - $250,000	5.19%	3.48%
% Households by income $250,000 - $500,000	1.68%	1.18%
% Households by income $500,000+	.45%	.29%
Median Household Income	$58,929	$49,046
Average Household Income	$73,234	$61,759
2001 DISPOSABLE HOUSEHOLD INCOME		
% Disposable HH income <$25,000	22.07%	33.37%
% Disposable HH income $25,000 - $35,000	15.58%	16.10%
% Disposable HH income $35,000 - $50,000	19.92%	18.36%
% Disposable HH income $50,000 - $75,000	25.51%	20.31%
% Disposable HH income $75,000 - $100,000	10.33%	7.40%
% Disposable HH income $100,000 - $150,000	3.88%	2.65%
% Disposable HH income $150,000+	2.71%	1.81%
2001 POPULATION BY RACE/AGE		
% White Population	94.54%	91.09%
% Asian Population	2.12%	2.72%
% Hispanic Population	1.75%	3.04%
% Black Population	1.28%	2.54%
% Mixed Race Population	1.09%	1.66%
% Other Population	.74%	1.49%
2001 Median Age	38.3	36.2
2001 Average Age	37.3	36.7

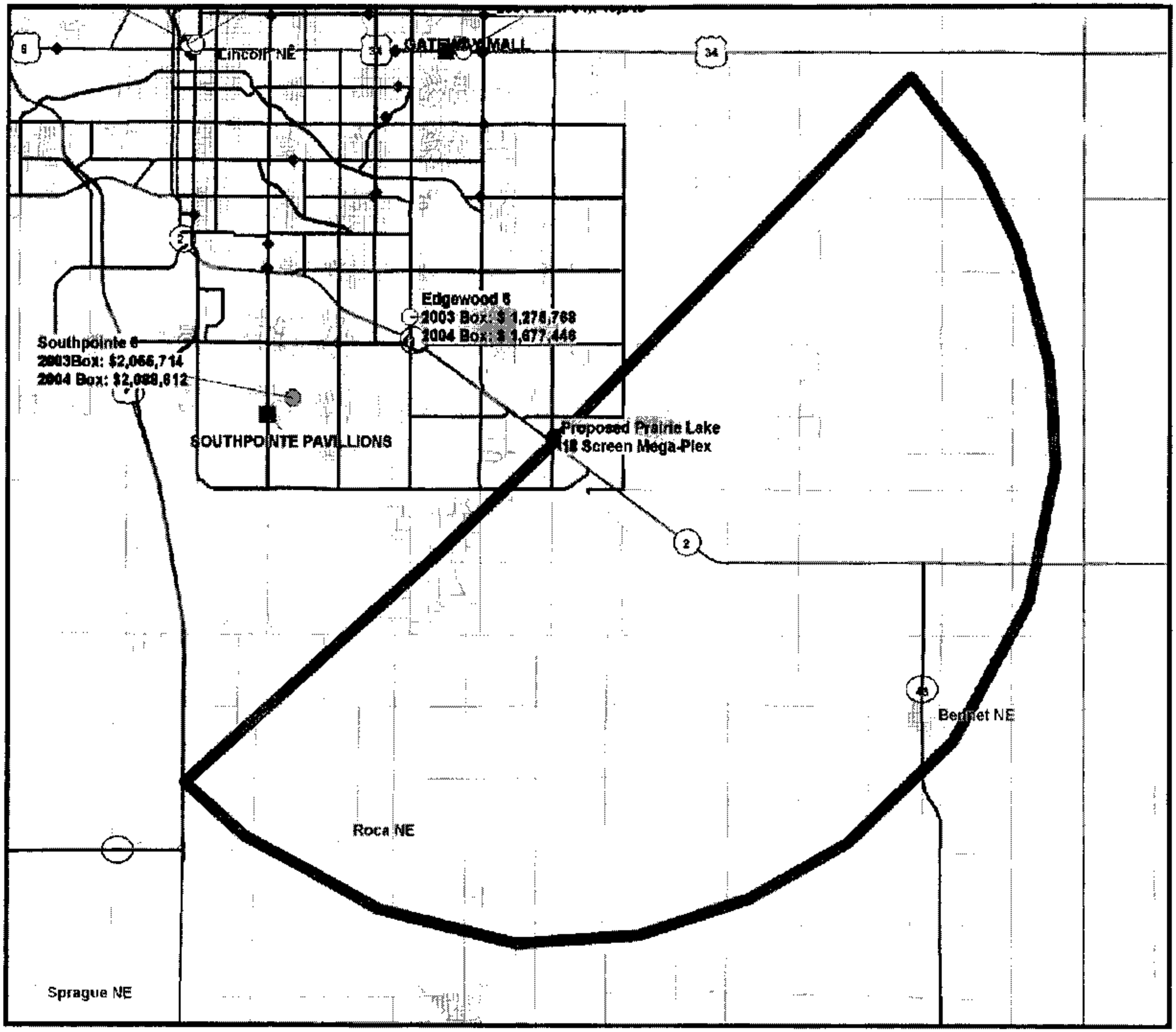
Data Source: ESRI Business Systems

Attachment 23

Proposed Prairie Lake 18

5, 7 Mile Radius 1/2 of Southeastern Portion Of 7 Mi





R-T Associates
Site Report
by Census 2000 Block Group

Site: Proposed Prairie Lake 18
½ of 7 Mile Radius to Southeast

Site Coordinates:
Longitude/X: -96.605281
Latitude/Y: 40.736662

	TRADE AREA 76.4604 sq/mi
POPULATION	
2006 Total Proj. Population	3,646
2001 Total Est. Population	3,343
2001-2006 Change	303
2001-2006 Pop. Growth	9.06%
2001 HOUSEHOLD INCOME	
% Households by income <$25,000	16.91%
% Households by income $25,000 - $35,000	12.35%
% Households by income $35,000 - $45,000	11.17%
% Households by income $45,000 - $55,000	11.46%
% Households by income $55,000 - $75,000	18.74%
% Households by income $75,000 - $100,000	15.59%
% Households by income $100,000 - $125,000	7.13%
% Households by income $125,000 - $150,000	3.09%
% Households by income $150,000 - $250,000	2.29%
% Households by income $250,000 - $500,000	1.28%
% Households by income $500,000+	.70%
Median Household Income	$54,903
Average Household Income	$64,168
2001 DISPOSABLE HOUSEHOLD INCOME	
% Disposable HH income <$25,000	26.33%
% Disposable HH income $25,000 - $35,000	15.96%
% Disposable HH income $35,000 - $50,000	20.06%
% Disposable HH income $50,000 - $75,000	25.89%
% Disposable HH income $75,000 - $100,000	8.47%
% Disposable HH income $100,000 - $150,000	2.03%
% Disposable HH income $150,000+	1.27%
2001 POPULATION BY RACE/AGE	
% White Population	97.57%
% Asian Population	.65%
% Hispanic Population	.98%
% Black Population	.39%
% Mixed Race Population	.82%
% Other Population	.47%
2001 Median Age	40.1
2001 Average Age	37.1

Data Source: ESRI Business Systems

Attachment 25

R. Keith Thompson, CLS
List of Qualifications, Past & Present Offices:

Present – Co-Founder and Principal of Hemisphere Property Group, a diversified developer and owner of mixed use and retail real estate.

Principal of R-T Associates, a national real estate consulting business specializing in adapting theatres within shopping centers and mixed use developments.

2001-2005 Co-Founder and managing member of Phoenix Theatres, LLC a theatre management and operating company operating theatres in Florida, Kentucky, South Carolina, and Virginia. Sold interest in Phoenix Theatres, LLC in March of 2005 to pursue start up and management of Hemisphere Property Group.

1991 - 2000 Regal Cinemas, Inc. - One of the original members of Regal Cinemas, Inc.'s Management Team.

1993-2000 -Vice President of Development, Regal Cinemas, Inc. - later promoted to Senior Vice President of Real Estate.

Accomplishments: Formed the Company's Real Estate Department, consisting of Development, Property Management, and Construction. Developed financial models to assess real estate transactions, and locations. Oversaw the Development, Construction and Expansion of over 150 Locations, in 28 states.

Have performed extensive work with developers, brokers, attorneys, architects, and contractors in the procurement of locations for corporate expansion, involving extensive travel to virtually every state and major city in the U.S. Have first hand and oversight knowledge of Site Selection and Negotiation; Pro-Forma Preparation; Lease, Purchase and Option Contract Negotiation; Governmental Land Use Approval, including Zoning, Use and Site Plan Approval, Architectural and Permit Review; Construction Process including Site (civil) Engineering, Plan Preparation, Construction Bidding, Contract Negotiation, and Project Management; Property Management, including Lease and Real Property Administration.

1991-1993 - Vice President of Finance, Regal Cinemas, Inc. - responsible for the financial management of the company, including the Acquisition of Capital, Bank and Investor Relations.

International Council of Shopping Centers – Served 6 years (1998-2004) as a Trustee of ICSC, the Retail Real Estate Industry's Premiere Trade Organization. Frequent speaker, panel leader, and faculty instructor at various ICSC and ULI functions, including ICSC University, and the ULI Entertainment Conference.

1984-1991 Citizens Fidelity Bank & Trust Company (merged with PNC in 1988). Hired by PNC in 1984 as Commercial Lending Trainee. In 1985 joined the U.S. Lending Group as a Commercial Loan Officer. Promoted to Assistant Vice President in 1987. In 1989 Promoted to Vice President, and transferred to Orlando, FL Loan Production Office (LPO). The Florida LPO was active in Corporate Banking, Merchant Banking, Mortgage Banking, Leasing and Financial Services. Left in July of 1991 to join Regal Cinemas, Inc.

Other Serve on Board of Directors of HDC Medical, Inc. a supplier to the Kidney Dialysis Industry.

Serve on Board of Directors of The Interfaith Health Clinic, a not-for-profit clinic providing health care to the working uninsured.

Education - Graduated with a Bachelor of Science Degree from Centre College of Kentucky in 1984. Major: Economics & Management; Minor: Psychology. Member of Sigma Chi Fraternity, as well as the Intercollegiate Football Team. Studied numerous post graduate courses in Finance, Management, and Real Estate.

PERSONAL

Married with three children. Active member of Cokesbury United Methodist Church, and member of the Finance Committee.

SUBMITTED AT PUBLIC HEARING
BEFORE PLANNING COMMISSION
BY MARK HUNZEKER: 6/08/05

COMP PLAN AMENDMENT NO. 05014
CHANGE OF ZONE NO. 05035
CHANGE OF ZONE NO. 05036
SPECIAL PERMIT NO. 05023
USE PERMIT NO. 140B

Des Moines, IA	**20-mile pop.= 459,909**			
Theatre	**Address**	**Phone**	**# of screens**	**Exhibitor**
Carmike Southridge 12	6720 SE 14th Ave		12	Carmike
Fridley- Copper Creek Cinemas	1325 Copper Creek Dr, Pleasant Hill	515-266-2	9	Fridley
Merle Hay Mall Cinemas	3800 Merle Hay Road	515-252-0	1	Independent
Carmike Cobblestone 9	8501 Hickman Road, Urbandale	515-276-2	9	Carmike
Fleur Cinema	4545 Fleur Road	515-287-4	4	Independent
Fridley Sierra 3 Theatres	1618 22nd Street, West Des Moines	515-225-1	3	Fridley
Century 20 Jordan Creek	101 Jordan Creek Pkwy, West Des Moines	515-267-9	20	Century
Carmike Wynnsong 16	5233 NW 84th Ave, Johnston	515-331-3	16	Carmike
Fridley- Springwood 9	2829 South Ankeny Blvd, Ankeny	515-964-5	9	Fridley
Omaha, NE	**20-mile pop.= 715,859**			
Dundee Theatre	4952 Dodge Street	402-551-3	1	Independent
Cinema Center	2828 S 82nd Ave	402-827-3	8	Douglas
AMC Oakview Plaza 24	3555 S 140th Plaza	402-333-0	24	AMC
Twin Creek Cinema	3909 Raynor Pkwy, Bellevue	402-827-3	16	Douglas
Q Cinema 9	3505 S 120th Street	402-827-3	9	Douglas
20 Grand	144th & West Maple Road	402-827-3	20	Douglas
Village Pointe Cinema	304 N 174th Street	402-827-3	16	Douglas
Omni 4 Theatres	300 W Broadway, Council Bluffs	712-325-6	4	Independent
Star Cinema-Council Bluffs	3220 S 23rd Avenue, Council Bluffs	712-256-7	16	Star
Madison	**20-mile pop.= 458,189**			
Marcus South Towne Cinemas	2305 West Broadway, Monona	608-223-3	5	Marcus
Hilldale Theatre	702 N Midvale Blvd	608-238-0	2	Star
Marcus Eastgate Cinemas	5202 High Crossing Blvd	608-242-2	16	Marcus
Marcus Westgate Art Cinemas	340 Westgate Mall	608-271-4	4	Marcus
Marcus Point Ultrascreen Cinemas	7825 Big Sky Drive	608-833-3	16	Marcus
Star Cinema- Fitchburg	Hwy 18 & PD, Fitchburg	608-270-1	14	Star
Cinema Café 5	124 West Main Street, Stroughton	608-873-7	5	Independent
Wichita	**20-mile pop.= 494,800**			
Warren Old Towne Theatre & Grill	353 North Mead	316-262-7	5	Warren
Movie Machine	4600 West Kellogg	316-945-0	5	Warren
Premiere Palace	11010 East Kellogg	316-691-9	10	Palace (Warren)
13th Avenue Warren	11611 East 13th Street	316-682-3	12	Warren
West 21st Warren	9150 West 21st	316-721-9	17	Warren
Dickinson Northrock 14	3151 Penstemon	316-636-5	14	Dickinson
Derby Plaza Theatres	1300 North Nelson Drive, Nelson	316-789-0	7	Independent
Lincoln	**20-mile pop. =281,455**			
Lincoln Grand	12th & P	402-441-0	14	Douglas
East Park 6	East Park Plaza Mall	402-441-0	6	Douglas
Edgewood 3	5200 South 56th Street	402-441-0	6	Douglas
SouthPointe Cinemas	2920 Pine Lake Road	402-441-0	6	Douglas

City	20-mi pop	# Theatres	# Screens	20-mi pop/Theatres	20-mi pop/Screens	# Exhibitors
Des Moines	459,909	9	83	51,101	5,541	5
Omaha	715,859	9	114	79,539	6,279	5
Madison	458,189	7	62	65,456	7,390	3
Wichita	494,800	7	70	70,686	7,068	3
Lincoln	281,455	4	32	70,364	8,795	1

SUBMITTED AT PUBLIC HEARING
BEFORE PLANNING COMMISSION
BY MARK HUNZEKER: 6/08/05

COMP PLAN AMENDMENT 05014
CHANGE OF ZONE NO. 05035
CHANGE OF ZONE NO. 05036
SPECIAL PERMIT NO. 05023
USE PERMIT NO. 140B

acres in area. A city of the primary class shall have authority within the area to prescribe standards for laying out subdivisions in harmony with the comprehensive plan; to require the installation of improvements by the owner, by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements; and to require the dedication of land for public purposes.

For purposes of this section, subdivision shall mean the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area.

Subdivision plats shall be approved by the city planning commission on recommendation by the city planning director and public works and utilities department. The city planning commission may withhold approval of a plat until the public works and utilities department has certified that the improvements required by the regulations have been satisfactorily installed, until a sufficient bond guaranteeing installation of the improvements has been posted, or until public improvement districts are created. The city council may provide procedures in land subdivision regulations for appeal by any person aggrieved by any action of the city planning commission or city planning director on any plat.

Source: Laws 1929, c. 49, § 1, p. 204; C.S.1929, § 15-1001; R.S.1943, § 15-901; Laws 1959, c. 40, § 2, p. 219; Laws 1963, c. 57, § 1, p. 238; Laws 1980, LB 61, § 2; Laws 1993, LB 39, § 3.

This section does not authorize cities to use subdivision control as a device to evade constitutional prohibitions of taking of property without compensation. Briar West, Inc., v. City of Lincoln, 206 Neb. 172, 291 N.W.2d 730.

This section does not authorize a city to require a developer to pay the cost of widening a street, while, at the same time, prohibit the developer's subdivision from having direct access to that street. Briar West, Inc. v. City of Lincoln, 206 Neb. 172, 291 N.W.2d 730.

Approval of plat by municipal authorities is not required where there is no subdivision of land, no dedication of roadways, and no sale of lots to others. Reller v. City of Lincoln, 174 Neb. 638, 119 N.W.2d 59.

15-902. Building regulations; zoning; powers; comprehensive plan; manufactured homes. (1) Every city of the primary class shall have power in the area which is within the city or within three miles of the corporate limits of the city and outside of any organized city or village to regulate and restrict: (a) The location, height, bulk, and size of buildings and other structures; (b) the percentage of a lot that may be occupied; (c) the size of yards, courts, and other open spaces; (d) the density of population; and (e) the locations and uses of buildings, structures, and land for trade, industry, business, residences, and other purposes. Such city shall have power to divide the area zoned into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land within the total area zoned or within districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but regulations applicable to one district may differ from those applicable to other districts. Such zoning regulations shall

0067

be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination.

(2)(a) The city shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Department of Health and Human Services Regulation and Licensure or the United States Department of Housing and Urban Development. The city may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The city may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(3) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing the seal of the Department of Health and Human Services Regulation and Licensure.

Source: Laws 1929, c. 49, § 2, p. 204; C.S.1929, § 15-1002; R.S.1943, § 15-902; Laws 1959, c. 40, § 3, p. 220; Laws 1963, c. 57, § 2,

IN SUPPORT

ITEM NO. 3.4a,b,c,d,e: COMP PLAN AMEND 05014
CHANGE OF ZONE 05035
CHANGE OF ZONE 05036
USE PERMIT 140B
SPECIAL PERMIT 05023

Michael Roselius
<mike_roselius@mac.com>
06/06/2005 04:31 PM

To plan@lincoln.ne.gov (p.177 - Public Hearing - 06/08/05)
cc
bcc
Subject Public Hearing on 18 screen theater

Unfortunately, I am unable to attend the public hearing on the 8th in person, but appreciate the opportunity to voice my feelings about the proposal.

First - as a resident of 6133 South 81st - a community very close to the proposed site, I have no concerns about traffic etc. for that area. That is an identified business district with significant development in place or planned, and these issues are expected and to-date appear to be well controlled.

My biggest concern has to do with the study which the committee and Mayor Seng are citing as basis for their denial.

According to an article in the Lincoln Journal Star on 05/27/05 - the study suggests that 79 percent of forecasted attendance to this theater would come from existing theaters.

I have 2 responses to that:

1. That would indicate to me that 4 in 5 current movie-goers are seeing movies at theaters they would prefer not to be at. This should support the idea of expansion.

2. This figure of 79% should not be a shock to any of us, and would apply to nearly any business that might build out there. Let me explain: On a basic level, there are 3 groups of people in the population that are affected by this proposal:

1. Those that would never see a movie regardless of the location of the theater.
2. Those that don't attend movies but would if the theater were closer or more convenient
3. Those that attend movies regardless of where they are shown.

Of those 3 groups - the largest segment are those in group #3 - and those are the 79% that this study identifies.

Let's apply the logic to a different business. Assume you are voting on the zoning for a Mexican restaurant at that location. It would not be surprising to discover that 4 in 5 diners at that restaurant were previously regularly dining at other Mexican restaurants.

In short, building a new theater, regardless of the location or number of screens, should not, in and of itself, create a new population of customers where one did not previously exist. Yet, this study and supporters of it, appear to suggest that unless that occurs, theater expansion should not occur. I don't agree.

If you have an identified developer, willing to risk significant dollars, to support the business expansion in an area of our city that is growing fast, I would request that we support and encourage their endeavor. While it is nice to envision a downtown Lincoln, bustling with activity and the center for movies and other entertainment, if the market is looking at another location (and it appears to be) we should not stand in it's way.

I appreciate the opportunity to be heard in support of this waiver.

Respectfully,

Michael Roselius
6133 South 81st
Lincoln, NE 68516
402-304-1535

LINCOLN HAYMARKET DEVELOPMENT CORPORATION.

June 7, 2005

LHDC is a non-profit organization, committed to the economic revitalization of Lincoln's Historic Haymarket District. Through a continuing comprehensive process LHDC protects, enhances and promotes the District's architectural and cultural heritage.

The Lincoln Haymarket Development Corporation has decided to take a position ***against*** the proposed amendment to the Downtown Lincoln Theater Policy. LHDC has a significant interest in maintaining our current Theater Policy because of the negative effect such a change would have on our Downtown business core

Some of the issues we considered in our discussion were:

1) The current policy was developed at a time when there was competition in the Lincoln theater business and was done with the cooperation of the theater operators at that time.

2) The City currently doesn't have a competitive market for the theater business, however, according to the Douglas Theater operators their charges for admission and concessions for the Lincoln operation are consistent with the Omaha market that does have competition.

3) The Grand Theater (14 screens) opened by Douglas Theaters in downtown Lincoln was selected as the site because of the theater policy in place.

4) The Planning Department has conducted a study and it indicates that the City of Lincoln has an above average number of screens for a City of our size. That the introduction of a large multi screen (18 screens) at Prairie Lake site at 84th and Highway 2 will result in the dilution of the market and potentially the financial failure of some of our current theaters. (ie: The Grand and Edgewood)

5) The Douglas Theaters has never objected to a competitor coming to the Lincoln market.

The LHDC Executive Board believes that good business practices would require that the current policy of 6 screens in outlying areas be kept in tact and that it be open to all theater companies to develop.

Sincerely

Douglas E. Lienemann
President

RECEIVED
JUN - 8 2005
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT